TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, PETITIONER,

vs.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 25, 1957
CERTIORARI GRANTED DECEMBER 16, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, PETITIONER,

vs.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

	Page
Proceedings in U.S.C.A. for the District of Columbia Circuit	
Joint appendix to Appellant's brief consisting of proceedings in U.S.D.C. for the District of Columbia Circuit	1
Complaint for review of deportation order and for injunctive relief	2
Answer	5
Motion for summary judgment	7
Findings of fact and conclusion of law	7
Order granting defendants' motion for summary judgment and dismissing the complaint	9
Proceedings before the Immigration and Naturalization Service	10
Decision of hearing officer	10
Proceedings before the Board of Immigration Appeals	14
Decision, Chairman	14

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 20, 1958

PAGE

Appendix to Appellees' brief consisting of proceedings before the Immigration and Naturalization Service 16
Transcript of hearing of October 30, 1951 (Excerpts from) 16
Exhibit 5—Hearing in naturalization proceedings, May 30, 1944 (Excerpts from) 19
Exhibit 6—Hearing in naturalization proceedings, January 21, 1946 (Excerpts from) 31
Exhibit 8—Board of Special Inquiry hearing, September 21, 1938 (Excerpts from) 33
Opinion, Bastian, J. 36
Judgment 39
Clerk's certificate (omitted in printing) 39
Order allowing certiorari 40
Order of substitution 40

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,885

FRANK BONETTI, *Appellant*

v.

HERBERT BROWNELL, Attorney General of the United States, et al., *Appellees*

Appeal from the United States District Court for the District of Columbia

---

JOINT APPENDIX

Filed Oct. 5, 1953

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4606-'53

FRANK BONETTI, 1455 Avon Park Terrace, Los Angeles 26, California, *Plaintiff*,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, Department of Justice, Washington, D. C.

and

ARGYLE R. MACKEY, Commissioner of Immigration and Naturalization, Department of Justice, Washington, D. C., *Defendants*.

Complaint for Review of Deportation Order and for Injunctive Relief

Frank Bonetti, by his attorneys, complaining of the defendants, alleges:

1. The Court has jurisdiction of this action under D.C. Code, sections 11-305 and 11-306, under 28 U.S. Code, section 1331, and under section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S. Code, section 1009. One of the purposes of this action is to enjoin the enforcement and execution of an act of Congress for repugnance to the Constitution, said act being a provision of section 22 of the Internal Security Act of 1950, amending the Immigration Act of October 16, 1918, which provision has been carried forward as section 241(a)(6)(C) of the Immigration and Nationality Act, 8 U.S. Code, Section 1251(a)(6)(C). Hence a three-judge court is required to be convened under 28 U.S. Code, sections 2282 and 2284.

2. The plaintiff, Frank Bonetti, is a native of France. He was admitted to the United States as an immigrant for permanent residence in 1923. He thereafter left the

United States and was admitted again for permanent residence in 1938. He last entered the country in the summer of 1939.

3. The defendant, Herbert Brownell, Jr., is the Attorney General of the United States. The defendant Argyle R. Mackey is the Commissioner of Immigration and Naturalization of the United States. The defendants are in charge of the administration of the statutes of the United States relating to the deportation of certain classes of aliens. Their principal offices are, and they may be found in, the District of Columbia.

4. On or about March 25, 1952, the defendant Mackey ordered that plaintiff be deported and on January 9, 1953, this order was affirmed by the Board of Immigration Appeals acting for the Attorney General. Upon its affirmance, said order of deportation became, and is, a final agency action for which judicial review is available under section 10 of the Administrative Procedural Act.

5. The deportation order against plaintiff was based solely on a finding that the plaintiff was a member of the Communist Party of the United States between 1932 and 1936, inclusive. No evidence was introduced in support of the order other than evidence of plaintiff's alienage and alleged former membership in the Communist Party. The hearing officer rejected evidence offered by the plaintiff to show that the Communist Party did not, at the time of plaintiff's alleged membership therein, advocate the overthrow of the government by force and violence.

6. The deportation order was based upon a finding by the defendants that the plaintiff had, subsequent to his entry into the United States, been a member of the Communist Party of the United States, and was therefore subject to deportation under the provisions of the aforementioned section 22 of the Internal Security Act of 1950.

7. The plaintiff has been ordered by the defendants to surrender to the Immigration and Naturalization Service

in Los Angeles at 10:00 a.m., October 6, 1953 with all his baggage and in readiness for deportation. Unless the defendants are restrained by the Court, they will deport him on or shortly after October 6, 1953.

8. The deportation order against plaintiff is unlawful, invalid, and violative of plaintiff's rights, for the reason that:

(a) The evidence does not support the finding that the plaintiff was a member of the Communist Party after entry into the United States.

(b) The deportation order was not supported by substantial evidence.

(c) The order and the statutory provision under which it was issued, on their face and as applied, constitute a bill of attainder and an ex post facto law, and violate the First Amendment, the due process clause of the Fifth Amendment, and the Sixth Amendment.

9. For the aforesaid reasons, plaintiff is imminently threatened with grave and irreparable injury, by illegal and unconstitutional acts of the defendants, for which he has no adequate remedy at law.

WHEREFORE, plaintiff prays for a judgment (1) setting aside the order of deportation made against the plaintiff; (2) enjoining the defendants from deporting or attempting to deport the plaintiff, from requiring him to surrender for deportation, and from otherwise molesting him; (3) awarding plaintiff the costs of this action; and (4) granting such other and further relief as may be appropriate. Plaintiff also prays for an appropriate temporary restraining order and for a preliminary injunction restraining the defendants pending the trial and disposition of this cause from deporting plaintiff, requiring him to surrender for deportation, or otherwise molesting him.

5 Filed June 2, 1955

Answer

Now comes the defendants by their attorney, the United States Attorney, and answer the complaint of plaintiff as follows:

FIRST DEFENSE

Responding specifically to the numbered paragraphs of the complaint the defendants aver:

1. Defendants are not required to answer the allegations contained in paragraph 1 of the complaint.

2. Admitted.

3. It is admitted that the defendant, Herbert Brownell, Jr., is the Attorney General of the United States and that the defendant, Argyle R. Mackey, was the Commissioner of Immigration and Naturalization at the time of the filing by the plaintiff of the within cause of action. It is further admitted that the defendant Herbert Brownell, Jr. is and defendant Argyle R. Mackey was in charge of the administration of the statutes of the United States relating to the deportation of certain classes of aliens. It is further admitted that the principal office of the defendant Herbert Brownell, Jr. is, and the principal office of the defendant Argyle R. Mackey was, within the District of Columbia.

4. It is admitted that an order of deportation was entered against the plaintiff on March 25, 1952 and that this
6 order was affirmed by the Board of Immigration Appeals on January 9, 1953. It is further admitted that by the action of the Board of Immigration Appeals on January 9, 1953 the order of deportation became final. The remaining allegations of paragraph 4 constitute conclusions of law and require no answer.

5. It is admitted that the order of deportation filed against the plaintiff is based upon a finding that the plaintiff was a member of the Communist Party of the United States between 1932 and 1936. It is denied that the only

evidence introduced in support of the order of deportation was proof of plaintiff's alienage and proof of his membership in the Communist Party of the United States. To the contrary, it is averred that, inter alia, there was proof of plaintiff's entry into the United States, there was the testimony of officers of the Immigration and Naturalization Service who testified in the hearings in deportation proceedings accorded the plaintiff and there was also testimony as given by the plaintiff in connection with prior proceedings before the Immigration and Naturalization Service. In addition, the defendant and officers of the defendant's agency considered the fact that the plaintiff stood mute during the course of the entire deportation proceeding. It is admitted that the hearing officer refused to receive in evidence certain evidence as offered by plaintiff with the alleged purpose of showing the character of the Communist Party of the United States.

6. Admitted, except that the order of deportation by its precise terms refers to the Act of October 16, 1918, as amended.

7. Denied.

8(a), (b) and (c). Denied.

9. Denied.

SECOND DEFENSE

For further answer and as a separate and complete defense to the complaint, the defendants aver that the complaint fails to set forth a cause of action upon which this Court may grant relief.

7

THIRD DEFENSE

For further answer and as a separate and complete defense to the complaint, defendants aver that the administrative proceedings have been properly conducted pursuant to law and regulation; that there has been no arbitrary and capricious determination made anywhere within the said

administrative proceedings; that the final result is premised upon a careful consideration of the entire administrative record and the application of the appropriate statutory law; that such determinations having been reasonably and properly made should not be disturbed by this Court.

Wherefore, having fully answered plaintiff's complaint, the defendants demand judgment together with the costs of this action.

---

8 Filed June 24, 1955

Motion for Summary Judgment

Come now the defendants by their attorney, the United States Attorney, and move this Court for summary judgment on the grounds that:

1. The complaint fails to state a cause of action upon which this Court may grant relief.

2. There is no genuine issue of material fact and the defendants are entitled to judgment as a matter of law.

Attached hereto and made a part hereof is the record of the Immigration and Naturalization Service relating to the plaintiff.

---

10 Filed Aug. 29, 1955

Findings of Fact and Conclusions of Law

This cause having come on for hearing on defendants' motion for summary judgment and plaintiff's opposition thereto, and the Court being fully apprised in the premises, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff concedes that he is an alien.

2. Plaintiff concedes that he was a member of the Communist Party of the United States from 1932 to 1937.

3. Plaintiff was accorded a hearing in deportation proceedings by a special inquiry officer of the Immigration and Naturalization Service under a warrant of arrest charging him with being deportable from the United States as an alien who had been a member of the Communist Party of the United States after entry into the United States.

4. Plaintiff remained mute and refused to testify during the course of the entire administrative deportation hearing.

5. Plaintiff initially entered the United States on November 1, 1923, at which time he was admitted for permanent residence.

11 6. Plaintiff departed from the United States in 1937 thereby giving up any rights he had for permanent residence which he had acquired as a result of his admission to this country in 1923. He returned to this country on October 8, 1938. On this occasion after a hearing before a special board of inquiry to which he disclosed his former membership in the Communist Party, he was admitted for permanent residence a second time.

7. An order of deportation was entered by the special inquiry officer of the Immigration and Naturalization Service who presided at the hearing in deportation proceedings after the conclusion of the aforesaid deportation hearing, and plaintiff's appeal therefrom was dismissed by the Board of Immigration Appeals.

8. Plaintiff concedes that the Supreme Court has held that the statute under which the administrative deportation proceedings were held is constitutional, but claims that said statute is unconstitutional as applied to the facts in this case.

9. Plaintiff concedes that the Supreme Court has held that the procedural requirements of Sections 5, 7, 8, and 11 of the Administrative Procedure Act of 1946 do not obtain to the within deportation proceedings.

Conclusions of Law

1. The word "entry" in the applicable deportation statutes is not restricted in meaning to the "last entry".

2. The plaintiff herein was a member of the Communist Party of the United States "after entry" into the United States.

3. The statute under which the administrative deportation proceedings were held is constitutional.

4. Plaintiff is, as a matter of law, deportable as an alien who was a member of the Communist Party of the United States after entry into the United States.

5. The defendants' motion for summary judgment should be granted.

Burnita Shelton Matthews
Judge

August 29, 1955

---

12 Filed Aug. 29, 1955

Order

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, it is by the Court this 29th day of August, 1955,

Ordered, Adjudged, and Decreed that the defendants' motion for summary judgment be and it is hereby granted, and it is

Further Ordered, Adjudged and Decreed that the plaintiff's complaint be and it is hereby dismissed, and it is

Further Ordered, Adjudged and Decreed that plaintiff's motion for a stay pending appeal be and it is hereby denied, and it is

Further Ordered, Adjudged and Decreed that the defendants shall be restrained for a period of thirty (30) days

from the date of the entrance of the within order from taking the plaintiff into custody or effecting his deportation from the United States.

BURNITA SHELTON MATTHEWS
Judge

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Los Angeles 13, California

File Nos. 246-P-107614
A-1273106

In Re: FRANCESCO GUISEPPE BONETTI, a/k/a FRANK BONETTI, a/k/a FRANK MARLIN

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT:
Attorney Aubrey I. Finn,
6513 Hollywood Boulevard,
Hollywood 28, California.

CHARGES:

Warrant: The Act of October 16, 1918, as amended, in that he has been after entry, a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

Lodged: None.

APPLICATION: None.

DETENTION STATUS: Released under $2000.00 appearance bond.

DISCUSSION AS TO DEPORTATION: The respondent testified that he is the person named in the warrant of arrest and that he was served with a copy of the warrant of arrest

(Ex. 1). Respondent refused to further testify or answer any other questions on advice of Counsel.

Witness James H. Busselle identified the respondent as the person on whom he served the warrant of arrest, and he further testified that he fingerprinted the respondent on the same date, October 11, 1951. The witness identified Exhibit 3 as a fingerprint chart executed and signed by him, and that the respondent was the person who signed this fingerprint chart.

The witness Wade H. Westmoreland testified that, in his opinion, the right index fingerprint appearing on the original Alien Registration Form AR-2 of one FRANCESCO or FRANK BONETTI, was made by the same person whose right index fingerprint appeared on the fingerprint chart marked Exhibit 3 which had been previously identified as relating to the respondent by Witness Busselle. It is clear, in the absence of any controverting evidence, that the Alien Registration Form (ex. 4) relates to the respondent in these proceedings.

Alien Registration Form AR-2 (Ex. 4) containing the signature of one FRANK BONETTI, shows that FRANK BONETTI was a member of the Communist Party from 1932 to 1936, and a member of the Workers Alliance from 1935 to 1937, a member of the Veterans of the Abraham Lincoln Brigade, and a member of the United American Spanish Aid Committee. As Alien Registration Form (Ex. 4) relates to the respondent in these proceedings as shown by the testimony of witnesses Busselle and Westmoreland, it is clear that the respondent was a member of the Communist Party from 1932 to 1936.

Witness Oral K. Chandler testified that he presented certain documents to the respondent for his inspection in January, 1951, and that the respondent examined these documents, now marked as Exhibits 5 to 9 inclusive. Witness Chandler testified that the respondent identified these documents as relating to him, the respondent. Exhibits

8 and 9 are copies on the Board of Special Inquiry hearing held in New York on September 21, 1938 and which records contain the respondent's admission of membership in the Communist Party in Los Angeles, California, and further that he resided in the United States from November, 1923 to June 28, 1937, at which time he, the respondent, departed from the United States and went to Spain where he served in the 15th International Brigade of the Spanish Army, on the Republican side. Respondent was excluded from admission to the United States by the Board of Special Inquiry at New York on September 21, 1938, but was subsequently admitted to the United States on October 8, 1938 as a quota immigrant under $500.00 bond (Ex. 11).

Exhibit 4, Alien Registration Form, shows that the respondent first arrived in the United States on November 1, 1923 for permanent residence. Exhibit number 10 is a verification of the admission of FRANCESCO BONETTI at New York, New York on November 1, 1923. Exhibit number 4 also shows that the respondent last arrived in the United States on September 19, 1938 at New York, New York, and further shows that he was admitted to the United States on October 8, 1938. Exhibit number 11 is a verification of the respondent's admission at New York, New York on October 8, 1938, under bond. Exhibit number 4 also shows that the respondent received first citizenship papers on June 1, 1940 at Los Angeles, California under the file number 23-82713. Exhibit number 14 is an application for a Declaration of Intention (first papers) bearing number 23-82713, signed by one FRANK BONETTI. The information contained in this application shows the same name, address, date and place of birth, and date and place of entry as shown in Exhibit number 4. The reverse of this application is stamped to show that it was filed June 1, 1940.

It is clear that the respondent is a 43 year old male, a native of France and citizen of Italy, who was admitted to

the United States for permanent residence at New York, New York on November 1, 1923, and who was again admitted to the United States at New York, New York on October 8, 1938. In Exhibit number 7, a statement by the respondent on February 5, 1946, he testified that he was in Mexico for one day in the early summer of 1939 and that he reentered the United States at San Ysidro, California.

The charge contained in the warrant of arrest is sustained.

FINDINGS OF FACT AS TO DEPORTATION: Upon the basis of the foregoing evidence, it is found:

(1) That the respondent is an alien, a native of France and citizen of Italy;

(2) That the respondent was admitted to the United States for permanent residence at New York on November 1, 1923;

(3) That the respondent resided in the United States from November 1, 1923 until June 28, 1937;

(4) That the respondent was readmitted to the United States for permanent residence at New York on October 8, 1938;

(5) That the respondent last entered the United States at San Ysidro, California in the early summer of 1939;

(6) That the respondent was a member of the Communist Party of the United States from 1932 until 1936.

CONCLUSIONS OF LAW AS TO DEPORTATION: Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Section 19 of the Immigration Act of February 5, 1917, as amended, and the Act of October 16, 1918, as amended, the respondent is subject to deportation on the ground that, he has been, after entry, a member of the following class, set forth in Section 1 of said Act of

October 16, 1918, as amended: An alien who was a member of the Communist Party of the United States.

RECOMMENDED ORDER: It is recommended that the respondent be deported from the United States pursuant to law on the charge contained in the warrant of arrest.

JOSEPH A. DUMMEL,
Joseph A. Dummel,
Hearing Officer.

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

Jan. 9, 1953

File: A-1273106—
Los Angeles (246-P-107614)

In re: FRANCESCO GUISEPPE BONETTI or FRANK BONETTI or FRANK MARLIN

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT:
Blanch Freedman, Esq.
220 Broadway
New York 17, N. Y.
(Heard June 17, 1952)

CHARGES:
Warrant: Act of October 16, 1918, as amended—After entry member of the Communist Party of the United States

Lodged: None

APPLICATION: Cancellation of proceedings

DETENTION STATUS: Released under bond

The Assistant Commissioner, in a decision dated March 25, 1952, directed the subject's deportation from the United States, pursuant to law, on the above-stated charge. The case is now before us on appeal from that order.

The record relates to a native of France and last a citizen of Italy who was originally admitted to the United States for permanent residence at New York on November 1, 1923. He last entered the United States at San Ysidro, California in the early summer of 1939. The Assistant Commissioner found that the respondent was a voluntary member of the Communist Party of the United States from 1932 through 1936, and directed deportation on that basis. The evidence of record sustains that finding of the Assistant Commissioner.

Counsel contends that there is nothing in the record to substantiate the finding with regard to the respondent's Italian citizenship. In this connection, we wish to point out that counsel's contention is belied by the evidence of record. Counsel has also raised the constitutional questions in this case of due process and bill of attainder. With regard to this feature of the case, it has long been the position of this Board that it is not within our province to pass on the constitutionality of such questions. We accept the legislative and judicial mandates given us, and believe that it is within the power and capacity only of the United States Courts to declare the statutes and judicial precedents unconstitutional.

On the basis of the foregoing, we concur in the decision of the Assistant Commissioner. Accordingly, we will dismiss the appeal.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.

Chairman

[fol. 16] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,885

FRANK BONETTI, Appellant,

v.

HERBERT BROWNELL, JR., ET AL., Appellee.

Appeal from the United States District Court for the District of Columbia

---

APPENDIX FOR APPELLEES' BRIEF—FILED APRIL 26, 1956

[fol. 22] Before the Immigration and Naturalization Service
Los Angeles 13, California

UNITED STATES DEPARTMENT OF JUSTICE

TRANSCRIPT OF HEARING

By Hearing Officer: Hearing in Deportation Proceedings, in the case of FRANCESCO GUISEPPE BONETTI, also known as FRANK BONETTI, FRANK MARLIN.

Alien File No. A1 273 106.

Los Angeles No. 246-P-107614.

Place of Hearing: Los Angeles, California.

Date of Hearing: October 30, 1951.

Persons Present:
Hearing Officer: Joseph A. Dummel.

[fol. 23] Examining Officer: Thomas Nolan.

Respondent: Francesco Guiseppe Bonetti.

Attorney: Aubrey I. Finn, 6513 Hollywood Blvd., Hollywood 28, Calif.

Stenographer: Caron Rhodes.

Hearing conducted in the English Language and recorded by Dictaphone.

Hearing Officer to Respondent:

Q. Will you rise and be sworn?
A. By Counsel: We object to the respondent's being sworn at this time. We don't think the Government has any right to call the respondent as a witness in his behalf.

To Counsel:

Q. Are you advising the respondent not to be sworn, counsel?
A. At the moment I am making it as an objection.

Hearing Officer: The objection is overruled.
The respondent is directed to stand and be sworn.
Counsel: I am advising the respondent and instructing him that he need not be sworn or testify as a witness in this proceeding at this time.

* * * * * * *

Examining Officer: At this time I wish to call my witness, Mr. Chandler.

Hearing Officer to Witness:

Q. Will you raise your right hand. Do you solemnly swear that your testimony in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?
A. I do.
Q. What is your true and correct name?
A. Oral Kenneth Chandler.

To Witness: Be seated, please.
To Examining Officer: You may proceed.

[fol. 24] Examining Officer to Witness:

Q. Mr. Chandler, what is your occupation?

A. I am an investigator for the Immigration and Naturalization Service.

Q. What is your present official station?

A. Los Angeles, California.

Q. How long have you been stationed in Los Angeles, California?

A. I have been assigned to this station since September of 1949.

Q. During the course of your duties as an investigator, Mr. Chandler, did you have an occasion to become acquainted with the respondent in these proceedings, who sits at the table next to counsel.

A. I know this individual as FRANK BONETTI.

Q. What are the circumstances surrounding your acquaintanceship with him?

A. I was assigned Mr. Bonetti's case for investigation, and in the course of that investigation I interviewed Mr. Bonetti. That is the reason for my acquaintance with him.

Q. When did this interview take place?

A. In January of this year.

Q. Where?

A. In my office, Room 133 of this building.

Q. Did you have occasion at that time to question Mr. Bonetti concerning his immigration status?

A. I did.

Q. What did you ask him?

A. At that time I presented to Mr. Bonetti statements which he had previously made before this Service. I asked him to examine them and state whether they related to him, which he did. In addition to that he examined and acknowledged his Alien Registration record. In the course of the interview he further contributed such information as his present residence, his present employment, his marital status, the fact that he had been a member of the Communist Party of the United States from about 1932 to sometime in 1937.

• • • • • • •

[fol. 25] EXHIBIT 5

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Los Angeles, California.

L.A. File 246/P/107614

Investigation in the Case of: Francesco Guiseppe Bonetti, or Frank Bonetti, Petitioner for Naturalization.

Interview conducted in the Offices of the Immigration and Naturalization Service, Los Angeles, California, May 30, 1944.

Present:

Lloyd C. Emerick: Immigrant Inspector.

Edythe D. Marusa: Stenographer.

Francesco Guiseppe: Witness.

By Inspector Emerick to Witness:

Q. You are informed that I am a United States Immigrant Inspector and authorized by law to administer oaths in connection with the enforcement of the Immigration and Naturalization Laws. I desire to take a statement from you in connection with your petition for naturalization filed in the United States District Court, Los Angeles, California, May 19, 1943. Any statement which you make should be voluntary, and you are hereby warned that any statement which you do make may be used against you or others in any proceeding the Government may see fit to institute. Are you willing to answer questions or make statements under these conditions?

A. Yes.

* * * * * * *

Q. When and where did you first enter the United States?

A. I entered the United States the first time in 1923 at New York.

Q. When did you last enter the United States?

A. I last entered the United States October 8, 1938 at New York on the S.S. "Di Grasse".

[fol. 26] Q. At the time you last entered the United States, were you admitted for permanent residence?

A. Yes.

Q. Were you admitted upon your arrival at New York or were you detained for special hearing?

A. I was detained at Ellis Island for 18 days I believe.

Q. Did you have a hearing before a Board of Special Inquiry?

A. Yes, before three men.

Q. Were you required to give testimony under oath at that time?

A. I was and I did.

Q. Do you remember being sworn to all the statements you set forth?

A. Yes, I was sworn.

Q. What was the decision of the Board at that time?

A. I was detained because I was disabled when I entered, and the decision was that I post a $500.00 bond. The decision was referred to Washington; I am not sure whether they decided themselves or Washington decided I post the $500.00 bond.

Q. Were you admitted to the United States upon posting the said $500.00 bond?

A. Yes, I was.

Q. Do you recall any of the questions asked you or your answers given at the time you were held for hearing before the Board of Special Inquiry?

A. Yes, I do remember some.

Q. Do you recall being asked whether or not you had ever been on relief of any kind or received public aid?

A. I believe I was asked that.

Q. Do you recall your answer to the question of you having received aid or relief?

A. If I had been asked that, it would be "yes" because I had been on the W.P.A. and S.R.A.

Q. Do you recall any occasion when you answered "no" to such question?

A. Up to that time, "no" but later on I had a hearing

[fol. 27] between the period including only the time after I came back, and then I answered, "no."

* * * * * * *

Q. How many times have you been arrested?

A. Once: at that time only.

Q. What was the charge on which you were arrested?

A. Rioting.

Q. Do you recall the exact date of your arrest?

A. No, I believe it was 1934 or 1933.

Q. Could it have been May 30, 1933?

A. That is right.

Q. Could the charge have been assault with a deadly weapon?

A. Yes, that was in it too; that came out of the riot.

Q. Do you recall whom you assaulted at this time?

A. It was a general fight; I can't remember exactly who it was, but I think it was a Marine.

Q. Is it true that you assaulted a U. S. Marine during a Communist meeting at San Diego, California?

A. That is right.

Q. What type of weapon did you use to assault the United States Marine?

A. A Piece of wood.

Q. No Knife?

A. No, no knife or anything like that; one of those posts we had with slogans on it.

Q. Do you recall whether or not you made any bodily injury on the person of the United States Marine?

A. No; there was no injury at all that I know of.

Q. Do you recall the disposition of your case at that time?

A. The case was dismissed.

Q. Can you explain exactly why you were arrested May 30th, 1933?

A. It was a Memorial Day meeting in the park at San Diego and prior to that, the committee that organized the meeting had asked permission from the City Council to march from the park to a church where we would have [fol. 28] Memorial Day Service later on. Later on that permit was rejected the last minute. The meeting went on in the

park without any difficulty or anything. Several speakers spoke at the meeting in the park. From there, we decided to go to the church. Since we were not allowed to parade in the street, we decided to walk down the sidewalk going to the church. As we started out, the Marine who was there and other Legionnaires also and policemen jumped right in the crowd of people and started pushing people around, tearing down signs we had, and from there, a general fight started and I was arrested with several others.

Q. Was this a Communist meeting?

A. It was not a Communist meeting in the sense it was limited to Communist members only; it was sponsored by the Young Communist League and it was Memorial Day meeting, honoring the American dead.

Q. Were the signs displayed at this meeting entirely Communistic?

A. The signs as much as I can remember were anti-war signs or signs asking relief for unemployed rather than going along and building up the Navy—that money should go to the unemployed.

Q. Were you a member of the Communist Party at that time, May 30, 1933?

A. Yes, I was a member of the Communist Party.

Q. Do you recall to which unit you belonged?

A. It is pretty hard to tell the number; I don't remember.

Q. Do you remember the book number you held?

A. No, I don't remember.

Q. I now present to you Communistic record of one Francesco Guiseppe Bonetti, age 26, in 1934 joined the Communist Party October, 1932, member of unit 4, Book No. 2133 and desire to ask you whether or not this record related to you?

A. I wouldn't know about the number, but I admit I was a member of the Communist party then.

Q. Did you pay regular dues to the Communist Party at that time?

A. Yes.

[fol. 29] Q. When did you discontinue paying dues to the Communist Party?

A. April, 1936.

Q. Did you understand the principles of the Communist

Party at the time you joined the Communist organization in 1932?

A. I had certain ideas, yes.

Q. Why did you discontinue your membership in the Communist Party in 1936?

A. I left Los Angeles before that; I lost contact with members; I went to work in the agricultural fields and when I came back, I didn't bother to sign up again.

Q. Do you understand the principles of Communism?

A. They believe in public ownership in means of production.

Q. Do you believe in Communism?

A. In the public ownership in the means of production, I don't think it is a very bad idea; many things are already socialized now, post offices, schools, etc., and whether that system could be extended—it probably could.

Q. Do you believe Communism to be a good form of government?

A. It depends on many things, like there are many forms of capitalistic government; the United States Government is capitalistic, so is the British, French, South Americas. Among these governments some are good; the United States is good; some are strictly dictatorships, like some of the South American countries and European countries. Under Communism, there probably would be a variety of types of governments; like among capitalistics, some bad; it is up to the people in that country to make it good.

Q. Do you believe in a change in government through Communistic principles?

A. The Communist Party, the way I understand it, did not aim at that time, exactly to change. We understood to change the government, the majority of the people would have to want that change. Unless that vast majority wanted the change, there was no chance of it. The Com- [fol. 30] munist Party, itself did not aim to change the United States Government by itself.

Q. Do you believe a change, if necessary should be by force, as advocated by the Communist Party, even if there were a majority?

A. If the majority wanted it, then the force is not necessary. Should a vast majority of the people of the United

States want a change of the government and some minority would deny them the right of that change, force would be necessary then.

Q. Under the circumstances, then do you believe in force and the operation of force?

A. Yes.

Q. Do you subscribe to any Communist publication at the present time?

A. No.

Q. Did you ever subscribe to any Communist publication?

A. I never did subscribe to it; I used to buy the People's World; it was then the Western Worker.

Q. Have you ever distributed Communist literature?

A. When I was a member of the party.

Q. During the period of time you belonged to and took active part in the Communist Party from 1932 to 1936, did you distribute any literature regarding Communism?

A. I did.

Q. Do you belong to any organizations at the present time?

A. I am a member of the Veterans of the Lincoln Brigade; it has a New York address, but I don't know it. We don't have one here.

Q. Do you have your membership card with you at this time?

A. No; it isn't a strict organization. All men who fought in Spain are members automatically.

Q. During what period of time did you reside in Spain after you left the United States?

A. From July 14, 1937 to July 14, 1938, exactly one year. [fol. 31] Q. Were you actively engaged in the Fascist uprising under General Franco?

A. I was fighting against the Facist uprising, against General Franco.

Q. Do you mean by that statement you were actively engaged in the Spanish Civil War?

A. I was actively fighting for the Spanish Republic.

Q. What induced you to take up arms in defense of the Spanish government?

A. I decided to go to Spain and fight for the Spanish republic, because I understood that the rebellion of Franco

against the republic was actually an attack against the republic of Spain by Mussolini and Hitler who used Franco as a tool. If the Axis uprising, comprising Rome and Berlin was not stopped, they would go on from country to country until the World War would start.

Q. In connection with your statement concerning the faction represented by Franco, what were the policies advocated by the opposing faction?

A. The general policies of the Spanish republic were reformist in the sense that they gave land to the peasants. They established the 8-hour day; they increased wages, opened up public schools and there was generally a progressive government in Spain; about Franco, the other faction, I haven't read any of their platforms that they may have; the only thing I know is that he was tied up with Hitler and Mussolini and regardless of what their platform would have been it would mean nothing because anything Hitler, Mussolini and Franco has promised never did mean anything.

Q. Is it true that the Spanish Republican faction was financed in part and assisted in many ways by Communistic factions and organizations?

A. The Spanish republic had the help of practically every labor and trade union, Socialist parties, Communist parties and as expressed in the Gallup Poll, believe about 77% of the American people were for the Spanish Republic.

[fol. 32] Q. Did you engage actively in combat duty during the Spanish uprising?

A. I did.

Q. Were you wounded or otherwise disabled as a result of this military service?

A. I lost a foot in Spain.

Q. Was it necessary for you to designate yourself as a citizen of Spain and take the oath of allegiance to Spain in connection with your service?

A. No, it wasn't.

Q. At the time you joined the Spanish Republican army in July, 1937, of what country did you claim to be a citizen or subject?

A. I thought at that time I was French since I was French born.

Q. After the conclusion of your service with the Spanish Republican army, for what type of passport did you apply?

A. The Consul in Paris asked me to go to the Italian Consul because my parents were Italian and apply there for a passport. The passport was denied and the American Consul made out a paper in lieu of a passport under which I entered the United States.

Q. What citizenship was claimed and listed in connection with your entry into the United States October 8, 1938?

A. If I remember right, on the paper was, Race, Italian; Nationality, none. I don't remember exactly how it was put in. It was neither citizenship of Italy or a citizen of France.

Q. Of what country do you presently claim to be a citizen or subject?

A. Now, I understand I am an Italian citizen.

* * * * * * *

Q. According to our records, you made applications for unemployment on two different occasions: in 1935 and 1936. Were you a member of the Communist Party at the time you executed your first application for unemployment relief?

A. In 1935; yes.

[fol. 33] Q. Did you ever hold any office in connection with your membership in the Communist Party at Los Angeles, California?

A. I have held several, if you want to call them offices. The unit was a group of about 10, 15, 5, always changing in numbers. Three of us were known as officers, organizer, secretary and educational director. From time to time, I have held all three offices in such a small group.

Q. Have you ever solicited membership in the Communist Party?

A. Yes, I did.

Q. At the time you belonged to the Communist Party from 1932 to 1936, did you believe in Communism?

A. I had some ideas as to what Communism is, which ideas were not the same as some of other people's ideas about Communism.

Q. Did you ever pass out or distribute any Communist literature?

A. Yes, I did.

Q. Did you at that time believe in the policies advocated by the Communist Party?

A. I believed at that time in the policies advocated by the Communist Party, but here too, it must be understood that my ideas as to the philosophy and policy of the Communist Party do not coincide with the ideas that—say, Mr. Dies, has stated often; for instance, I did not believe that the Communist Party stood for the forceful over-throw of the American Government. The Communist Party was perfectly legal and had I done anything breaking the laws of the United States or California, I could have been punished for it.

Q. In connection with the policies of the Communist Party and the principles of Communism, you were, previously during this hearing, asked the following question: "Do you believe a change, if necessary should be by force, as advocated by the Communist Party, even if there were a majority?" and you answered as follows: "If the majority wanted it, then the force is not necessary. Should a vast majority of the people of the United States want a [fol. 34] change of government and some minority would deny them the right of that change, force would be necessary then." I desire to ask you at this time, do you believe under these conditions in the over-throw of the United States Government by force?

A. The American people have a constitutional right to change their government anytime they so wish it. At times in history, force can be very beneficial. As an example, when the thirteen original American Colonies wanted more representation from the British kings, which was denied them constantly over a long period of time; in that case, force became inevitable and beneficial. Today, we have an example in Germany where the Nazi Party instituted a dictatorship over the German people and allows no free expression from the German people. It becomes a duty of the German people to use force against their government. In such a case, force is acknowledged advisable and necessary.

Q. In such, or any situation in the United States, where a change of government is desired, would you advocate a use of force by the people of the United States for the purpose of overthrowing the United States Government?

A. Force cannot and should not be used on any slightest pretext. A revolution can only grow out of long processes of injustice and oppressions. Such injustice and oppressions are not now present in the United States and no force would be justified against the United States Government as presently constituted.

Q. If a change in the United States Government became necessary under these conditions, do you believe a revolution should be advocated and that the change should be secured by the overthrow of the United States Government by force?

A. I would not believe in a case like that, because the injustices are only temporarily due to a depression, with the means open to the American Government to rectify any such injustices so that force is certainly not necessary.

Q. Do you believe a situation could ever exist where [fol. 35] force would be necessary in order to secure a change in the United States Government?

A. I don't believe such a situation could arise in America; no.

Q. If such a situation should ever arise in the United States, would you then believe in the over-throw of the United States Government by force?

A. If a situation would come about in the United States where a party comparable to the National Socialist in Germany would take power and deny all means of expression to the American people and institute wide scales of injustice, oppressions and imperialistic qualities, like Germany is doing now, it would then be the duty of the American People, and I would be one, to overthrow such a government by force if such were necessary.

Q. Do you presently believe in the principles of the Communist Party?

A. I haven't been connected with the Communist Party since 1936 and I have no idea what policy they have now. I believe now, from what I see in the daily papers, the Communists are supporting the war—I do myself—I don't

know of any other activity that the Communist Party is engaged in right now. By the way, I don't believe there is any more Communist Party.

Q. Do you believe in Communism?

A. My idea of Communism is the common ownership of the wealth of the Country for the means of production. The U. S. Government is now owning and operating large institutions like schools, postoffices, dams, parks and many things, even industrial plants. I believe that is good and I believe of extension of that policy would be very beneficial to the Country, but that is not to mean that the United States Government should own every private house, private cars, and individual property. It only refers to large utilities, like railroads, communicating utilities, telephone wires and things which are very vital to the welfare of the American People.

Q. Do you believe the U. S. Government should be set up according to the principle you have just outlined?

[fol. 36] A. I believe it would be beneficial to the American people to own those things, yes.

Q. Do you believe the U. S. Government should operate on that principle?

A. I believe it would be a good idea; yes.

Q. Do you know whether or not the Communist Party advocates such a policy now?

A. At the time I was a member they did. From what I have seen in the paper, I don't believe the Communist Party is advocating such a policy now, but I am not sure about it.

Q. Do you subscribe to any Communist publications or do you purchase any Communist publications such as the People's World?

A. No.

Q. Do you read any Communist publications of any kind, such as the People's World?

A. No; all I can say, occasionally I might get hold of one in two or three months.

Q. Have you ever discussed Communism with any of your friends and neighbors?

A. When I was working at the hotel, 702 West 3rd Street,

I believe discussions came up once in awhile; I believe we had discussions, very informally, that came up like that.

Q. Have you been absent from the United States since your last entry for permanent residence October 8, 1938?

A. No.

Q. Ever gone to Mexico?

A. No.

Q. Did you ever go for a visit to Tijuana, Mexico?

A. I believe I did go; I think it was about 1941.

Q. Do you know the month?

A. No.

Q. How about September?

A. I guess it could be; it was in the summer.

Q. How long were you absent from the United States in 1941?

A. I think we slept over night there and came back the following day.

[fol. 37] Q. Did you have in your possession a border crossing card or other document which would permit your entry into the United States?

A. I had my paper of entry with my photograph on it; nobody asked for it. I didn't show it.

Q. Were you inspected and admitted by a United States Immigrant Inspector at that time?

A. No; no questions were asked; we just drove through and back.

* * * * * * * *

EXHIBIT 6

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Los Angeles 13, California

246/P/107614

Investigation in the Case of: Frank Bonetti; Petitioner for Naturalization.

Investigation conducted in the Offices of the Immigration and Naturalization Service, Los Angeles, California. January 21, 1946.

Present:

Lloyd C. Emerick: Immigrant Inspector.

Edythe D. Marusa: Stenographer.

Frank Bonetti: Witness.

By Inspector Emerick to Witness:

* * * * * * *

Q. When and where did you last enter the United States?

A. I entered at New York, Oct. 8, 1938 with the exception of the day I went down to Lower California.

Q. Have you been absent from the United States since your last entry at New York, Oct. 8, 1938?

A. Yes, I was absent one day.

Q. Do you recall the exact date you were absent from the United States?

A. No, I don't; it was in the summer of 1939, I believe. [fol. 38] Q. At what port did you reenter the United States?

A. Down by Tijuana (San Ysidro, California.

Q. How did you effect your reentry into the United States?

A. I did not go through any legal proceeding at the time; none was necessary; I crossed both ways and no questions were asked.

Q. Did you claim at the time of your entry to be a citizen of the United States?

A. No, I didn't.

Q. Were you questioned by an official of the Immigration and Naturalization Service concerning your alienage?

A. No, I wasn't.

Q. Do you mean, you were not questioned upon your return to the United States in the summer of 1939?

A. No, I wasn't questioned.

* * * * * * *

Q. Since your last entry at New York, Oct. 8, 1938, have you attended any Communistic meetings?

A. No.

Q. Have you rejoined the Communist Party since your last entry Oct. 8, 1938?

A. No.

Q. Have you in any way at any time since your last entry, been connected with the Communist Party?

A. No.

Q. Do you presently receive any Communist Party publications?

A. No.

Q. Do you subscribe to the People's World?

A. No.

Q. Has any person requested that you rejoin the Communist Party since your last entry, Oct. 8, 1938?

A. When I first came back from Spain, I was asked if I would want to join again.

Q. Why have you not joined the Communist Party?

A. I just did not feel like it.

Q. Was your refusal to join because you had discontinued [fol. 39] believing in all the beliefs or policies of the Communist Party?

A. No, I just told them I didn't want to join any more. I didn't give them any reason. The second question you asked, whether or not I didn't believe in all the principles of the Communist Party; I never thought when I was a member of the Communist Party, that there was anything illegal or unconstitutional in the aims or policies of the Communist Party.

* * * * * * *

EXHIBIT 8

EC-10

BONETTI, FRANCESCO

30 m. single

stateless Italian

Before a Board of Special Inquiry held at Ellis Island, New York Harbor, N. Y., September 21, 1938.

Present: Messrs. Kaba (Chmn.), Galvin and Bishara.

LPC PD Insp. John F. Wright.

S. I. 2—SS De Grasse—Fr. Line September 19, 1938.

Delivered at Ellis Island September 20, 1938. 11 AM.

3rd class.

$80. No relatives.

Going to 121 W. Ann St., Los Angeles California.

Medical certificate dated September 19, 1938. This is to certify that the above described person has this day been examined and is found to be afflicted with LOSS OF LEFT FOOT and PART OF LEG which may affect ability to earn a living. Detectability clause will be accomplished on request provided alien has been or will be admitted to hospital. (sgd.) H. F. White.

Alien sworn by Insp. Kaba, testified in English:

Q. What is your full and correct name?
A. Francesco Bonetti.

• • • • • • •

[fol. 40] Q. Why did you leave the U. S. June 28, 1937?
A. To go to Spain.
Q. Do you mean to fight in the army?
A. Yes.
Q. Did you join the Spanish Army?
A. I did.
Q. On what side did you fight?

A. Republican side.
Q. What was your organization there?
A. Fifteenth International Brigade.

• • • • • • •

Q. How long did you serve in the army there?
A. One year.
Q. What was your rank?
A. Soldier.
Q. Why did you leave the army?
A. Because I am wounded. I lost my foot.

• • • • • • •

Q. Did you ever belong to a club, organization, society or association?
A. Yes.
Q. Give me the names of them?
A. I belonged to the Workers Alliance in Los Angeles on the corner of Second and Broadway.
Q. Are you still a member there?
A. No.
Q. What else?
A. I was a member of the Communist Party for a while.
Q. What unit?
A. It was Unit 19.
Q. Where was it located?
A. In the general neighborhood between Temple and Sunset.
Q. Where was the meeting place, the office, where you paid your dues?
A. We met in private houses. There is no office.
[fol. 41] Q. Who was the head of that unit?
A. At the time, I was myself for a time.
Q. How many people were you in charge of?
A. Twelve—fifteen.

• • • • • • •

Q. Was your unit part of the Communist Party of the state of California?
A. Naturally.
Q. And was the Communist Party of the State of California a member of the Communist party of America?
A. Yes.

Q. And is the Communist Party of America a section of the Communist International?

A. As far as I know, yes.

Q. So a member of the Communist Unit #19 in Los Angeles is automatically a member of the Communist International, is he not?

A. Yes.

• • • • • • •

Q. Have you ever been arrested?

A. I was arrested once.

Q. When were you arrested?

A. In 1933 in San Diego, I think it was in March. It might have been April.

Q. Why?

A. Peace Day Demonstration there.

Q. What disposition was made of your case?

A. The case was dismissed.

Q. How long did they keep you locked up?

A. Ten days.

Q. You mean ten days before the trial came up?

A. Yes.

Q. Have you been arrested any other time?

A. No.

• • • • • • •

[fol. 42] Q. The doctors at this station certified you as being afflicted with loss of left foot and part of leg which may affect your ability to earn a living. Do you wish to make a statement now?

A. No but in relation to the Communist Party, I want to state I am not a member of it any more.

Q. When did you cease to be a member?

A. In the spring of 1937.

Q. You mean just about when you went to Europe to fight for Spain?

A. A few months before that.

• • • • • • •

[fol. 43] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,885

FRANK BONETTI, Appellant,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., Appellees.

Appeal from the United States District Court for the District of Columbia

---

Mr. David Rein, with whom *Mr. Joseph Forer* was on the brief, for appellant.

Mr. Harold H. Greene, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, and *Lewis Carroll*, Assistant United States Attorney, were on the brief, for appellees. *Mr. Leo A. Rover*, United States Attorney at the time record was filed, also entered an appearance for appellees.

Before WASHINGTON, DANAHER and BASTIAN, Circuit Judges.

OPINION—December 27, 1956

BASTIAN, *Circuit Judge*: This is an appeal from a judgment of the District Court granting appellees' motion for summary judgment and dismissing appellant's complaint, which had been filed to secure a review of an order of deportation entered against appellant and for injunctive relief.

[fol. 44] Briefly stated, the facts are as follows:

Appellant first entered this country for permanent residence on November 1, 1923. In 1937, he left the United States to fight in the Spanish Civil War as a member of the Abraham Lincoln Brigade. On October 8, 1938, he

returned to this country and, after a special hearing, in the course of which he testified to Communist Party membership on his part from 1932 to 1936, he was admitted a second time for permanent residence. Appellant left the country for one day and re-entered in the summer of 1939. He was, in no sense of the word, a "nominal" communist. While a member of the party, he held offices in a party unit and was its head at one time; but there is no evidence of his having been a member since he last came to the United States.

The Immigration and Naturalization Service instituted proceedings against appellant which resulted in a final administrative order that he was subject to deportation as an alien who had been a member of the Communist Party of the United States following entry into this country, as provided by 8 U.S.C. § 1251(a). This statute, so far as is pertinent here, provides that any alien who was, "after entry" into the United States, a member of the Communist Party of the United States shall be deported pursuant to statutory procedures. "Entry" was defined in the Act as "any coming" into this country.

Appellant sought judicial review of the deportation order, contending in effect that the term "entry" as used in the statute should be construed to mean "last entry," and that, if so construed, the record could not support a deportation order, there being no evidence of membership in the Communist Party after appellant's last entry.

Both parties rely on *United States ex rel. Volpe* v. *Smith*, 289 U.S. 422 (1933), and agree that the statutory definition of entry as "any coming" is taken from that decision.

Volpe was an alien who legally entered the United States in 1906, and who, in 1925, was convicted of a crime [fol. 45] involving moral turpitude. In 1928 he visited Cuba, returning the same year. In 1930, the immigration authorities sought to deport Volpe on the theory that he had been convicted of a crime of moral turpitude prior to entry. Thus, conduct *prior to entry* was the basis for deportation whereas here the basis was conduct *after entry*. In *Volpe*, the alien argued that entry meant original entry and that his last entry could not be used as

the basis for finding a conviction of crime "prior to entry." The Supreme Court, however, declared entry to mean ". . . any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one."

United States ex rel. Belfrage v. *Kenton*, 224 F.2d 803 (2d Cir. 1955) seems to us precisely in point here. Belfrage entered the United States in 1937 for permanent residence. After receiving a re-entry permit, he went abroad in 1944. While abroad his re-entry permit expired but, in 1945, he was allowed to re-enter this country as a returning alien resident. In 1953, the immigration authorities took action to deport him because he had been a member of the Communist Party after his entry in 1937 (his first entry), though there was no evidence of party membership after his last entry in 1945. The District Court held that a first entry was an entry within the meaning of the statute and that, therefore, Belfrage was deportable. On appeal, the Second Circuit affirmed, saying that each time Belfrage came into the United States from abroad there was an entry within the statutory meaning of the term. The appellate court regarded this conclusion as dictated by the decision in *Volpe*.

Holding, as we do, that the word "entry" as used in 8 U.S.C. § 1251(a) means "any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one," it follows that the judgment of the District Court should be and is

Affirmed.

[fol. 46] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,885, October Term, 1956.

C. A. 4606—53

FRANK BONETTI, Appellant,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., Appellees.

Appeal from the United States District Court for the District of Columbia.

Before: Washington, Danaher and Bastian, Circuit Judges.

JUDGMENT—December 27, 1956

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: December 27, 1956.

Per Circuit Judge Bastian.

[fol. 48] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 49] SUPREME COURT OF THE UNITED STATES

No. 94, October Term, 1957

FRANK BONETTI, Petitioner,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al.

ORDER ALLOWING CERTIORARI—December 16, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 50] SUPREME COURT OF THE UNITED STATES

No. 94, October Term, 1957

FRANK BONETTI, Petitioner,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al.

ORDER OF SUBSTITUTION—January 6, 1958

On Consideration of the motion to substitute William P. Rogers, Attorney General of the United States as party respondent in the place and stead of Herbert Brownell, Jr., resigned, in this case,

It Is Ordered by this Court that the said motion be, and it is hereby, granted.

Office - Supreme Court, U.S.
FILED
MAR 25 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 94

FRANK BONETTI, *Petitioner*,

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL., *Appellees*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID REIN
JOSEPH FORER
711 Fourteenth Street, N. W.
Washington, D. C.
Attorneys for Petitioner.

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement of the Case	3
Reason for Granting the Writ	5
Conclusion	12
Appendix:	
Opinion	1a
Judgment	4a

CITATIONS

Barber v. Gonzales, 347 U. S. 637	8, 11
Bell v. United States, 349 U. S. 81	7
Berrebi v. Crossman, 208 F. 2d 498	10
Delgadillo v. Carmichael, 332 U.S. 388	11
Gonzales v. Barber, 207 F. 2d 398	8
Lapina v. Williams, 232 U. S. 78	8
Lewis v. Frick, 233 U. S. 291	8
Mangoang v. Boyd, 205 F. 2d 553	8
Rochin v. California, 342 U. S. 165	12
Rowoldt v. Perfetto, No. 34, this Term	12
Russian Volunteer Fleet v. United States, 282 U. S. 481	11
Tan v. Phelan, 333 U. S. 6	11
United States v. American Trucking Association, 310 U.S. 534	11
United States v. C.I.O., 335 U. S. 106	11
United States ex rel Stapf v. Corsi, 287 U. S. 129	8
United States ex rel Claussen v. Day, 279 U. S. 298	8
United States v. Katz, 271 U. S. 354	11

Page

United States v. Neelly, 145 F. Supp. 615, aff'd sub nom. United States v. Sahli, 216 F. 2d 33 9
United States ex rel Mezei v. Shaughnessy, 345 U. S. 206 8
United States ex rel Volpe v. Smith, 289 U. S. 422 ..8, 9

STATUTES

Section 22 of the Internal Security Act of 1950 ....2, 5, 12

8 U. S. C. sec. 1101(a)(13)* 9

Section 241(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. sec. 1251(a) 3, 5, 6, 7, 9

28 U. S. C. sec. 1254(1) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

FRANK BONETTI, *Petitioner*,

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL., *Appellees*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit which affirmed a judgment of the United States District Court for the District of Columbia sustaining an order for the deportation of the petitioner.

OPINION BELOW

The opinion of the court below has not yet been officially reported. Copies of the opinion and judgment are annexed hereto.

JURISDICTION

The judgment of the Court of Appeals was issued on December 27, 1956. (R. 46) The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. Code, section 1254(1).

QUESTIONS PRESENTED

1. Whether the statutory provision for deportation of aliens who become members of the Communist Party after "entering" the United States applies to the petitioner, who entered the country for the first time in 1923, was a member of the Communist Party from 1932 to 1936, left the country in 1937 giving up his residence and all rights to return, and entered the country again as a new immigrant in 1938, at which time after a hearing in which he acknowledged his past membership in the Communist Party, he was adjudicated admissible and admitted for permanent residence and has not since been a member of the Communist Party.

2. Whether deportation under the above circumstances and on a record which used against the petitioner the testimony he gave at the hearing at which he was adjudicated admissible, violates due process of law.

3. Whether the statute providing for the deportation of aliens for past membership in the Communist Party is unconstitutional on its face or as applied to the facts in this case.

STATUTE INVOLVED

Section 22 of the Internal Security Act of 1950 provides in part as follows:

"That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * * *

Section 4 of the aforesaid Section 22 provides in part:

"(a) Any alien who was at the time of entering the United States, or has been at any time thereafter, . . . a member of any one of the classes of aliens enumerated in Section 1(2) of this Act, shall upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

This statute was carried forward by Section 241(a)(6)(c) of the Immigration and Nationality Act of 1952, 8 U. S. Code, section 1251(a)(6)(c), providing:

"Any alien in the United States . . . shall upon the order of the Attorney General, be deported who . . . is or at any time has been, after entry a member of the following classes of aliens: . . . Aliens who are members of the . . . Communist Party of the United States."

STATEMENT OF THE CASE

The petitioner is an alien who was born in France, of Italian parentage. He is 49 years of age. He first entered the United States in 1923 at the age of 15. During this period of residence he was a member of the Communist Party for the period 1932 to 1936.

During the period of his membership, he understood the "principles of Communism" to consist of a belief in public ownership of the means of production and did not believe that the Communist Party stood for the forceful overthrow of the American government. He left the country in 1937, to fight for the Spanish republic against the Franco rebellion, thereby giving up any rights he had for permanent residence which he had acquired as a result of his admission to this country in 1923 (R. 7-8, 13, 25-26, 28-35).

Petitioner returned to this country in October 1938, and again applied for admission as an immigrant alien. A hearing on this application was held before a Board of Special Inquiry, and at the hearing the petitioner testified that he had been a member of the Communist Party of the United States for the period 1932 to 1936. The Board of Special Inquiry recommended against his admission, but on appeal the petitioner was admitted for permanent residence a second time (R. 8, 12, 13, Exhs. 8, 9, 11).[1] The petitioner left the country for one day and reentered in the summer of 1939. (R. 13)

In 1942 the petitioner married a native-born American citizen and became the stepfather of her two American-born children. He applied for naturalization in 1943. In 1944 and again in 1946, he was interviewed in connection with the application and again testified fully to his past membership in the Communist Party during the period 1932 to 1936. (Exhs. 5, 6, R. 25-39) His application was not further processed by the Service.

---

[1] The notation "Exh." refers to exhibits introduced at the deportation hearing.

The petitioner has not been a member of the Communist Party at any time since 1936,[2] or since his entry into the United States and his admission for permanent residence in 1938. (R. 12-13; Exhs. 4, 5, 6, 8, 9). He was, nevertheless, ordered deported on the ground of his past membership in the Communist Party. The sole evidence of this past membership consisted of the petitioner's own testimony before the Board of Special Inquiry at the time of his application for admission as a permanent resident in 1938, his alien registration form (Exh. 4), and the statements given in interviews in connection with his application for naturalization.

The petitioner sued in the United States District Court for the District of Columbia, challenging the validity of the deportation order and requesting that it be set aside. (R. 2-4). The trial court held that the statute authorized the deportation of the petitioner because of his past membership in the Communist Party during his first period of residence in the country, and granted judgment for the Attorney General (R. 8-9). The Court of Appeals affirmed (R. 43-46).

REASONS FOR GRANTING THE WRIT

1. This case involves an important and constantly recurring problem as to the proper construction to be given to Section 22 of the Internal Security Act of 1950 and Section 241(a)(6)(C) of the Immigration and Nationality Act of 1952. These acts provide that an alien may be deported for membership in the Communist Party "after entry." We contend that this

[2] The petitioner in one of his statements stated that he quit the Communist Party in the spring of 1937, but the Immigration Service found that he had been a member from 1932 to 1936 (R. 13, 15).

term must be limited to an alien's last entry, or, at a minimum, to his last entry for permanent residence. The government contends, and the court below agreed, that the term entry as used in the statute means any one of an alien's several entries. Certiorari should be granted so that this Court may resolve this important question of statutory construction.

The construction of the statute urged by the government is contrary to the basic scheme of the immigration laws and to the interpretation of the term "entry" previously given by this Court. The construction is also in conflict with the canons of statutory construction of deportation laws as laid down by this Court and with the construction given the statute by the Fifth Circuit. Moreover, the construction given the statute by the court below brings about an arbitrary and unreasonable result.

(a) The basic scheme of the immigration laws demonstrates that Congress did not intend, for the purposes of determining deportability, to go behind a basic entry at which the rights of an alien to be admitted were adjudicated, as in the case of the petitioner here. Section 241(a) of the Immigration and Nationality Act, 8 U.S.C. section 1251(a)[3] lists the classes of aliens who are deportable. The first two classes are aliens who were at the time of their entry excludable in accordance with the laws existing at the time of entry, and aliens who entered the United States without inspection or in violation of some law. The remaining classes of deportable aliens are deport-

[3] For purposes of convenience, we deal with the Immigration and Nationality Act of 1952, which codified pre-existing immigration statutes, rather than with the welter of amended and re-amended pre-existing legislation.

able for their conduct after entry. If an alien has satisfactorily overcome the obstacles to admission, his future status in the country is determined by his conduct subsequent to entry. If he leaves the country, he is subject on return to all current exclusionary rules, even though they were adopted after his prior entrance. But if the alien stays physically put within the country, he does not run the exclusion gauntlet over again. Under this general scheme, the only relevant entry is the last entry at which time the alien satisfied all the requisites for admission.

When Congress wished to depart from this general scheme, it specifically so provided. Thus category (13) of section 241(a) provides for the deportation of aliens who "prior to, or at the time of *any* entry or at any time within five years after *any* entry, shall have knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law." Thus Congress did distinguish between "after entry" and "after any entry". When it wished to have a deportation provision apply to *any* entry, it said so expressly. The only fair inference is that where Congress merely said "entry," it did not mean "any entry," but meant only the last entry, or at least the last entry for permanent residence. "When Congress has the will it has no difficulty in expressing it . . . When Congress leaves to the judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." *Bell v. United States*, 349 U.S. 81, 83.

(b) This interpretation of the statute is the only interpretation consistent with prior decisions of this Court applying the principle of "entry." In all previ-

ous decisions in which this Court has considered the consequences that flow as a result of the determination of the date of an alien's "entry" into the United States; it has uniformly held that the alien's status must be determined as of the time of his last entry (or, if he is seeking admission, of the last proposed entry). *Lapina* v. *Williams*, 232 U.S. 78; *Lewis* v. *Frick*, 233 U.S. 291; *United States ex rel Volpe* v. *Smith*, 289 U.S. 422; *United States ex rel Claussen* v. *Day*, 279 U.S. 298; *United States ex rel Stapf* v. *Corsi*, 287 U.S. 129; *United States ex rel Mezei* v. *Shaughnessy*, 345 U.S. 206.

The rationale for these decisions is that each time an alien voluntarily leaves the United States and seeks to return, he is being admitted only by the grace of Congress, and is subject to the same restrictions as an alien seeking entry for the first time. *United States ex rel Mezei* v. *Shaughnessy*, *supra*. His residence permission is wiped out, and on reentering he is in the same status as a newcomer. *United States ex rel Volpe* v. *Smith*, *supra*, at 426; *Lewis* v. *Frick*, *supra*, at 297.

It being the theory of the immigration statutes that a reentering alien is a newcomer, whose status is determined as of the time of his last entry, it cannot be consistently held in this case that petitioner's status is determined by reference to his first entry. The term "entry" in immigration law is a technical word of art. *Barber* v. *Gonzales*, 347 U.S. 637; *Mangoang* v. *Boyd*, 205 F. 2d 553, 556. And in *Gonzales* v. *Barber*, 207 F. 2d 398, 402, aff'd *Barber* v. *Gonzales*, *supra*, the court rebuffed an attempt by the Immigration and Naturalization Service to manipulate the term "entry" so as to justify a deportation, by stating:

"The meaning of a term used in a statute cannot mean one thing for one situation and something else for a different situation else the law would not have that reasonable certainty which the people have a right to expect." And in *United States* v. *Neelly*, 115 F. Supp. 615, 625, aff'd sub nom. *United States* v. *Sahli*, 216 F. 2d 33, the court disapproved of the government's position that in any particular case it could pick *any* entry which would support deportability.

The government argued below, and the court agreed, that since the term "entry" is defined in the Immigration and Nationality Act of 1952 as "any coming of an alien into the United States, from a foreign port or place" 8 U.S.C. Sec. 1101(a)(13), the term "entry" as used in sec. 241(a)(6)(C) refers to "any entry," that is, to an entry "at any time." This is clearly a non sequitur.

In the first place, this definition was copied verbatim from the decision of the Supreme Court in the *Volpe* case *supra*. It is clear from that decision that the phrase "any coming" was used *qualitatively*, as meaning a coming *of any kind*, as whether for permanent residence, as a visitor, as a seaman, or in transit, or even illegally. This is all that the definition of "entry" implies. It has nothing to do with which of several entries is the critical entry for deportation purposes. It is a distortion of the legislation to treat a definition of the *kind* of coming as dispositive of *which* particular coming is referred to in other sections. All that the definition proves is that the petitioner's coming in 1923 was *an entry* under the Act. Of that there is no question. But this does not resolve the problem posed in this case as to whether or not it was *the entry* upon which the petitioner's status must be deter-

mined. We submit that on the basis of the statutory scheme of the deportation section, the use by Congress of the word "entry" rather than "any entry," the manner in which the term "entry" has previously been defined by this Court, the fact that Congress used the term "any entry" when it meant "any entry," and the canons of statutory construction for deportation statutes, see *infra*, all compel the conclusion that the dispositive entry was petitioner's 1938 or 1939 entry, and not the entry of 1923.

(c) The construction given the statute by the court below is inconsistent with the construction given a similar provision of the Immigration and Nationality Act by the Fifth Circuit in *Berrebi* v. *Crossman*, 208 F. 2d 498. In that case, the court set aside a deportation order which had been based upon past membership in the Communist Party in a foreign country prior to the alien's admission into the United States. The court stated (at 499):

> "It is not only significant, but very persuasive, that the petitioner was lawfully admitted into the United States. At the time he presented himself for admission, the standards to be met were very strict. The stipulation compels us to conclude that the petitioner met all the requirements when he was lawfully admitted. Even though the past misconduct of an alien might have justified his exclusion at the time of his application for admission, the fact that he was lawfully admitted, and lived a law-abiding life in this country thereafter, brings him within the different classification provided by law for an alien sought to be deported."

(d) The construction given by the statute below was inconsistent with the canon of construction for deportation statutes laid down by this Court. Immi-

gration statutes are to be narrowly construed, and since deportation is an extreme penalty, the statute is to be construed in favor of the alien. *Barber* v. *Gonzales*, *supra*; *Tan* v. *Phelan*, 333 U.S. 6; *Delgadillo* v. *Carmichael*, 332 U.S. 388. In *Tan* v. *Phelan* this Court said at 10:

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile, Delgadillo v. Carmichael, 332 U.S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used.

In addition, as we show below, the interpretation of the statute urged by the government and sustained by the court below, raises serious constitutional questions and brings about an arbitrary and unreasonable result. Under accepted canons of construction, the statute should be interpreted so as to avoid any constitutional questions (*United States* v. *C.I.O.*, 335 U.S. 106, *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481) and arbitrary and unreasonable results (*United States* v. *Katz*, 271 U.S. 354; *United States* v. *American Trucking Association*, 310 U.S. 534).

(e) The construction of the statute adopted by the court below and urged by the government causes a harsh and unconscionable result. Surely it is a breach of governmental faith to expel an alien for a cause which he divulged on seeking entry and which was

held not to exclude him. With full knowledge of petitioner's former connection with the Communist Party, the government decided that he was fit to reside in this country. That decision caused him to shape his life, take an American spouse, and otherwise fix his roots here. It shocks the conscience that petitioner should now be told that the cause which did not disqualify him from entering and residing in the country has somehow become a reason for disrupting his life and that of his family.

The breach of governmental good faith is magnified by the fact that the deportation order is based upon the testimony of the alien in his entry proceeding. Expulsion of the petitioner on these facts is so arbitrary that it violates due process of law. As stated in *Rochin* v. *California*, 342 U.S. 165, 173, due process prohibits governmental "conduct that shocks the conscience" or "offends the community's sense of fair play and decency."

2. This case also raises the important question of the constitutionality of the provision under which the petitioner was deported, Section 22 of the Internal Security Act of 1950. This issue is presently pending before this Court in the case of *Rowoldt* v. *Perfetto*, No. 34 this Term.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

DAVID REIN
JOSEPH FORER
711 Fourteenth Street, N. W.
Washington, D. C.
Attorneys for Petitioner.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,885

FRANK BONETTI, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

Decided December 27, 1956

Mr. David Rein, with whom *Mr. Joseph Forer* was on the brief, for appellant.

Mr. Harold H. Greene, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, and *Lewis Carroll*, Assistant United States Attorney, were on the brief, for appellees. *Mr. Leo A. Rover*, United States Attorney at the time record was filed, also entered an appearance for appellees.

Before WASHINGTON, DANAHER and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge*: This is an appeal from a judgment of the District Court granting appellees' motion for summary judgment and dismissing appellant's complaint, which had been filed to secure a review of an order of deportation entered against appellant and for injunctive relief.

Briefly stated, the facts are as follows:

Appellant first entered this country for permanent residence on November 1, 1923. In 1937, he left the United

States to fight in the Spanish Civil War as a member of the Abraham Lincoln Brigade. On October 8, 1938, he returned to this country and, after a special hearing, in the course of which he testified to Communist Party membership on his part from 1932 to 1936, he was admitted a second time for permanent residence. Appellant left the country for one day and re-entered in the summer of 1939. He was, in no sense of the word, a "nominal" communist. While a member of the party, he held offices in a party unit and was its head at one time; but there is no evidence of his having been a member since he last came to the United States.

The Immigration and Naturalization Service instituted proceedings against appellant which resulted in a final administrative order that he was subject to deportation as an alien who had been a member of the Communist Party of the United States following entry into this country, as provided by 8 U.S.C. § 1251(a). This statute, so far as is pertinent here, provides that any alien who was, "after entry" into the United States, a member of the Communist Party of the United States shall be deported pursuant to statutory procedures. "Entry" was defined in the Act as "any coming" into this country.

Appellants sought judicial review of the deportation order, contending in effect that the term "entry" as used in the statute should be construed to mean "last entry," and that, if so construed, the record could not support a deportation order, there being no evidence of membership in the Communist Party after appellant's last enry.

Both parties rely on *United States ex rel Volpe* v. *Smith*, 289 U.S. 422 (1933), and agree that the statutory definition of entry as "any coming" is taken from that decision.

Volpe was an alien who legally entered the United States in 1906, and who, in 1925, was convicted of a crime involving moral turpitude. In 1928 he visited Cuba, re-

turning the same year. In 1930, the immigration authorities sought to deport Volpe on the theory that he had been convicted of a crime of moral turpitude prior to entry. Thus, conduct *prior to entry* was the basis for deportation whereas here the basis was conduct *after entry*. In *Volpe*, the alien argued that entry meant original entry and that his last entry could not be used as the basis for finding a conviction of crime "prior to entry." The Supreme Court, however, declared entry to mean " . . . any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one."

United States ex rel. Belfrage v. Kenton, 224 F.2d 803 (2d Cir. 1955) seems to us precisely in point here. Belfrage entered the United States in 1937 for permanent residence. After receiving a re-entry permit, he went abroad in 1944. While abroad his re-entry permit expired but, in 1945, he was allowed to re-enter this country as a returning alien resident. In 1953, the immigration authorities took action to deport him because he had been a member of the Communist Party after his entry in 1937 (his first entry), though there was no evidence of party membership after his last entry in 1945. The District Court held that a first entry was an entry within the meaning of the statute and that, therefore, Belfrage was deportable. On appeal, the Second Circuit affirmed, saying that each time Belfrage came into the United States from abroad there was an entry within the statutory meaning of the term. The appellate court regarded this conclusion as dictated by the decision in *Volpe*.

Holding, as we do, that the word "entry" as used in 8 U.S.C. § 1251(a) means "any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one," it follows that the judgment of the District Court should be and is

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OCTOBER TERM, 1956
C. A. 4606-53

No. 12,885

FRANK BONETTI, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

Before: WASHINGTON, DANAHER and BASTIAN, *Circuit Judges.*

Judgment

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: December 27, 1956

Per Curiam JUDGE BASTIAN

LIBRARY
SUPREME COURT. U. S.

Office Supreme Ct.
FILED
FEB 13 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, *Petitioner*,

v.

WILLIAM P. ROGERS, Attorney General of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR PETITIONER

JOSEPH FORER
DAVID REIN
711-14th Street, N. W.
Washington, D. C.
Attorneys for Petitioner

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Statutes Involved	2
Questions Presented	4
Statement of the Case	5
Summary of Argument	8
Argument	11
I. Petitioner Is Not Deportable Because He Was Not a Member of the Communist Party At Or After His Second and Third Entries. Under the Statutes Properly Construed, Petitioner's Status Must be Determined By Reference To His Last Entry, Not the First	11
A. The Definition of "Entry" Relied on Below, Is Irrelevant, Since The Issue Is Not The Meaning of "Entry," But Which Of Several Entries Is the Critical One	11
B. Petitioner's Last Entry Is The Critical One For Determining His Status	15
Conclusion	20

CASES CITED

Barber v. Gonzales, 347 U.S. 637	13, 14, 18
Bell v. United States, 349 U.S. 81	18
Berrebi v. Crossman, 208 F. 2d 498	16
Chae Chan Ping v. United States (The Chinese Exclusion Case), 130 U.S. 581	17
Delgadillo v. Carmichael, 332 U.S. 388	14, 18
DiPasquale v. Karnuth, 158 F. 2d 878	14
Galvan v. Press, 347 U.S. 522	19
Lapina v. Williams, 232 U.S. 78	17
Lewis v. Frick, 233 U.S. 291	17

Page

Mangoang v. Boyd, 205 F. 2d 533, cert. den. 346 U.S. 876 ..... 13, 14
Rochin v. California, 342 U.S. 165 20
Rowoldt v. Perfetto, 355 U.S. 115 ..... 10, 19
Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 17
Tan v. Phelan, 333 U.S. 6 18
United States v. American Trucking Association, 310 U.S. 534 19
United States v. C.I.O., 334 U.S. 106 19
United States ex rel. Belfrage v. Kenton, 224 F. 2d 803 12
United States ex rel. Claussen v. Day, 279 U.S. 398 ..14, 17
United States ex rel. Stapf v. Corsi, 287 U.S. 129 ....14, 17
United States ex rel. Volpe v. Smith, 289 U.S. 422 ..14, 17

STATUTES

Immigration and Nationality Act, 166 Stat. 163
Sec. 101(a)(13), 66 Stat. 166-7, 8 U.S.C. 1101(a)(13) 3
Sec. 241(a), 66 Stat. 204, 8 U.S.C. 1251(a) 3, 7, 11, 15, 16, 17
Sec. 463(a)(16), 166 Stat. 279 3
Sec. 405(a), 66 Stat. 280 3
Sec. 22, Internal Security Act of 1950, 64 Stat. 1006 2, 7, 11
28 U. S. C. 1254(1) 1
Sec. 19(a), Immigration Act of Feb. 5, 1917, as amended, 39 Stat. 889, 54 Stat. 671, 8 U.S.C. (1940 ed.) 155 .....11, 15
Alien Registration Act of June 28, 1940, 54 Stat. 673, 8 U.S.C. (1940 ed.) 137 11
Sec. 1, Act of Oct. 6, 1918, 40 Stat. 1012, amended by Act of June 5, 1920, 41 Stat. 1008 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, *Petitioner,*

v.

WILLIAM P. ROGERS, Attorney General of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the Court of Appeals (R. 36-38) is reported in 240 F. 2d 624.

JURISDICTION

The jurisdiction of the Court rests on 28 U. S. Code, sec. 1254(1). The judgment of the Court of Appeals was issued on December 27, 1956 (R. 39). Petition

for certiorari was filed on March 25, 1957. Certiorari was granted on December 16, 1957 (R. 40).

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 1006, 1008, amended sections 1 and 4 of the Act of October 16, 1918, to provide in part as follows:

> "That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or many hereafter adopt . . .
>
> * * * * *
>
> "Sec. 4. (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, . . . a member of any one of the classes of aliens enumerated in section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided for in the Immigration Act of February 5, 1917. The provisions of this sec-

tion shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

These provisions were repealed by section 403(a). (16) of the Immigration and Nationality Act of June 27, 1952, 166 Stat. 163, 279, but were kept applicable to pending proceedings by section 405(a) of that Act, 66 Stat. 280.

Section 241(a) of the Immigration and Nationality Act, 66 Stat. 204, 8 U. S. Code 1251(a), provides in part:

"Sec. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

* * * * *

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any geographical or political subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such organization or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided,* That nothing in this paragraph, or in

any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means. . . :"

Section 101(a)(13) of the Immigration and Nationality Act, 66 Stat. 166 and 167, 8 U. S. Code 1101 (a) (13), provides:

"Section 101. (a) As used in this Act—

* * * * *

(13) The term 'entry' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place in an outlying possession was not voluntary: *Provided*, That no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception."

QUESTIONS PRESENTED

1. Whether the statutory provision for deportation of aliens who become members of the Communist Party after "entering" the United States applies to the petitioner, who entered the country for the first time in 1923, was a member of the Communist Party from 1932 to 1936, left the country in 1937 giving up his residence and all rights to return, and entered the country again as a new immigrant in 1938, at which time after

a hearing in which he acknowledged his past membership in the Communist Party, he was adjudicated admissible and admitted for permanent residence and has not since been a member of the Communist Party.

2. Whether deportation under the above circumstances and on a record which used against the petitioner the testimony he gave at the hearing at which he was adjudicated admissible, violates due process of law.

3. Whether the statute providing for the deportation of aliens for past membership in the Communist Party is unconstitutional on its face or as applied to the facts in this case.

STATEMENT OF THE CASE

Petitioner is an alien who was born in France of Italian parentage. On November 1, 1923, aged 15, he was admitted to the United States for permanent residence. In 1932 he joined the Communist Party in this country and remained a member until about the spring of 1936 when he dropped out of the organization.[1] (R. 7-8, 12-13, 15, 22-23.) He understood the principles of Communism to be belief in the public ownership of the means of production and did not believe that the Communist Party stood for the forceful overthrow of the American government (R. 23, 27-29).

---

[1] On one occasion petitioner placed the date of his leaving the Party as the spring of 1937 or a few months before he left for Spain on June 28, 1937 (R. 35). However, his other testimony indicated that he had left the Party in 1936 (R. 22-23, 28), and the Immigration Service found that he had been a member from 1932 to 1936 (R. 13, 15).

On June 28, 1937, petitioner left the United States in order to fight with the Spanish Republican army (R. 12, 24-25, 33-34). He did so because he felt that Franco was a tool of Mussolini and Hitler and that if the Rome-Berlin axis was not stopped in this aggression, "they would go on from country to country until the World War would start" (R. 24-25). Petitioner engaged in active combat in Spain and suffered the loss of a foot (R. 25).

On September 19, 1938, petitioner returned to the United States, applied for admission as an immigrant, and was detained at Ellis Island. A hearing on his admissibility was held by a Board of Special Inquiry, before which petitioner testified that he had been a member of the Communist Party and had fought in Spain. The Board of Special Inquiry ordered him excluded but was reversed on an administrative appeal, and on October 8, 1938, petitioner was again admitted to the United States for permanent residence as a quota immigrant. (R. 12-13; 20, 33-35; Exhs. 8, 9, 11, Tr. 103-119, 121.)[2] Petitioner has since then resided in the United States, leaving it only for a one-day visit to Mexico in the summer of 1939 (R. 13, 15, 30, 31). During his second period of residence in the United States he has never belonged to the Communist Party (R. 32).

In 1942, petitioner married a native-born American citizen (Exs. 13, 15, Tr. 124, 129). He obtained his first citizenship papers on June 1, 1940 (R. 12) and

[2] "Exh." refers to exhibits introduced at the deportation hearing, the record of which is part of the certified record in this Court. "Tr." refers to the transcript of the record of the deportation hearing.

filed a petition for naturalization on May 19, 1943 (R. 19).

In 1944, and again in 1946, he was interviewed in connection with his citizenship application by officials of the Immigration and Naturalization Service and again testified fully to his membership in the Communist Party during the period of 1932 to 1936 (R. 19-32). His application was not further processed.

On September 23, 1950, Congress enacted over the President's veto the Internal Security Act of 1950. Section 22 of that Act amended the Immigration Act of October 16, 1918, to provide for the expulsion of "any alien who was at the time of entering the United States, or has been at any time thereafter," a member of the Communist Party of the United States (*supra*, p. 2).

Deportation proceedings were instituted against petitioner in October 1951 (Ex. 1). Petitioner was ordered deported under the cited provision of the Internal Security Act, and the deportation order was sustained by the Board of Immigration Appeals (R. 14-15).[3] The evidence of past Communist Party mem-

[3] Sec. 22 of the Internal Security Act has been repealed by the Immigration and Nationality Act, but is kept applicable to pre-existing proceedings by the savings clause of the latter Act. Hence section 22 is the provision applicable to petitioner's case. Section 241 of the Immigration and Nationality Act carried forward the relevant substance of section 22 by providing for expulsion of any alien who has been after entry a member of the Communist Party of the United States. See *supra* p. 3. The court below treated the case as though the Immigration and Nationality Act provision were the one involved (R. 37, 38). This is a technical inaccuracy of no apparent significance. We believe that the question of construction and its answer are the same for both section 22 and section 241.

bership on which the administrative findings were based consisted of petitioner's testimony at the 1938 exclusion hearing before the Board of Special Inquiry, his admission of such membership in his alien registration form, and his statements in the 1944 and 1946 interviews on his application for naturalization (R. 11-12).

Petitioner brought suit against the Attorney General and the Commissioner of Immigration and Naturalization in the United States District Court for the District of Columbia to set aside the deportation order (R. 2-4). The District Court granted the Attorney General's motion for summary judgment on a record consisting of the complaint, answer and the record of the Immigration and Naturalization Service (R. 7-10). The court below affirmed (R. 36-39).

SUMMARY OF ARGUMENT

I

A. The deportation statutes provide for the expulsion of any alien who was a member of the Communist Party at the time of or after entry. Petitioner entered the country on three different occasions, in 1923, 1938 and 1939, respectively. He was not a member of the Communist Party at the time of any of these entries. He was a member after his first entry, but not after the second or third. The question, therefore, is which of his three entries is the relevant one for the purpose of the deportation statutes.

The court below thought that the problem was solved against petitioner by the fact that "entry" is defined, both by the cases and the Immigration and Nationality Act, as "any coming of an alien from a foreign place"

(subject to certain exceptions). This is a non-sequitur. The case and statutory definition of "entry" is meant merely to describe what kind of an arrival constitutes an "entry." It has no bearing on which of several entries is the critical one for determining an alien's status under other statutory provisions.

B. It is a general principle of both present and preceding immigration statutes that if an entering alien has satisfied the admission requirements, he is not thereafter expellable for causes, subsequently enacted, involving only pre-entry conduct or characteristics. The reason for this principle is that the admission of the alien represents a specific governmental determination that so far as his pre-entry conduct demonstrated he was a suitable person to reside in this country. To change this determination after the alien has rooted himself in our society would be an act of governmental bad faith.

It is also a settled principle that a determination of suitability is made with each entry made by the alien. A resident alien returning from a trip abroad to resume his residence is, for the purposes of the immigration laws, a newcomer.

Since a lawful entry is an insulation against expulsion for pre-entry conduct because it is a determination that such conduct was not disqualifying, and since each entry is such a determination, it follows that the latest entry supplies the applicable insulation. Hence, in order to be consistent with the scheme of our deportation laws, the provisions expelling for membership after entry should be interpreted to mean after the last entry. In the one instance in which Congress desired to depart from this scheme, it specifically used the words "after any entry."

The construction of the statutes to refer only to membership after the last entry is also supported by the principles that expulsion legislation will be interpreted favorably to the alien and that statutes should be construed to avoid serious constitutional questions and arbitrary and unreasonable results.

II

The statute expelling aliens for past membership in the Communist Party is unconstitutional on its face for the reasons stated in the briefs for petitioner in No. 5 this Term, *Rowoldt* v. *Perfetto*, 355 U.S. 115.

The application of the statute in this case imports new constitutional defects. It is a breach of governmental faith to expel petitioner, years after he was admitted to this country and settled here, for a cause which he divulged on seeking entry and which was held not to make him an undesirable person for residence. The breach of faith is magnified by the fact that the deportation order is based on testimony given by petitioner in his pre-entry proceeding and in his interviews on his naturalization petition. The disruption of the life of petitioner and his family on these facts is arbitrary, shocks the conscience, and thereby violates due process.

ARGUMENT

I. PETITIONER IS NOT DEPORTABLE BECAUSE HE WAS NOT A MEMBER OF THE COMMUNIST PARTY AT OR AFTER HIS SECOND AND THIRD ENTRIES. UNDER THE STATUTES PROPERLY CONSTRUED, PETITIONER'S STATUS MUST BE DETERMINED BY REFERENCE TO HIS LAST ENTRY, NOT THE FIRST.

A. The Definition of "Entry," Relied on Below, Is Irrelevant, Since the Issue Is Not the Meaning of "Entry," But Which of Several Entries Is the Critical One

The statute under which petitioner was ordered deported—section 22 of the Internal Security Act, amending the Act of October 16, 1918—provides for the expulsion of any alien who "at the time of entering the United States, or . . . at any time thereafter" was a member of the Communist Party. Similarly, section 241 of the current Immigration and Nationality Act, which the court below inaccurately applied (*supra*, p. 7, ftn. 3), provides for the expulsion of any alien who "is or at any time has been, after entry" a member of the Communist Party. Neither statute provides for the expulsion of an alien merely because he was a member of the Communist Party *before* he entered the United States.[4]

---

[4] The current Act, like preceding immigration legislation, provides for expulsion of any alien who was excludable by the law existing at the time of his entry. Sec. 241(a)(1) of the Immigration and Nationality Act, *supra*; sec. 19(a) of the Immigration Act of Feb. 5, 1917, as amended, 39 Stat. 889, 54 Stat. 671, 8 U. S. C. (1940 ed.) 155. Since the amendment made by the Alien Registration Act of June 28, 1940, 54 Stat. 673, 8 U. S. C. (1940 ed.) 137, the immigration statutes have excluded aliens who ever were members of an organization advocating violent overthrow of the United States government. Since 1950 (*supra*, p. 2), they have excluded aliens who ever were members of the Communist Party. Prior to June 28, 1940, the comparable legislation excluded only aliens who were members of a proscribed organization at the time

In the present case, petitioner entered the country on three different occasions, in 1923, 1938 and 1939, respectively. He was not a member of the Communist Party "at the time" of any of these entries. He was a member of the Communist Party after his first entry, but he was not a member after his second or third entries. The question, therefore, is which of his three entries is the relevant one in the statutes providing expulsion for Party membership after entry. If the first entry is included in the statutes, petitioner is deportable. Otherwise he is not.

As we later show, there are compelling reasons for construing the statutes to refer only to membership after the last of several entries. Before examining these, however, it is desirable to eliminate a source of confusion which has bedeviled the problem of construction in two Courts of Appeals.

The court below, and before it the Second Circuit in *United States ex rel. Belfrage* v. *Kenton*, 224 F. 2d 803, thought that the solution to the problem was the meaning of the word "entry." As these two courts found, subject to limited exceptions "entry" is defined by both the cases and section 101(a)(13) of the Immigration and Nationality Act, *supra*, p. 4, as "any

---

of their entry. Sec. 1, Act of Oct. 16, 1918, 40 Stat. 1012, amended by Act of June 5, 1920, 41 Stat. 1008. Accordingly, aliens who have entered since 1940 are subject to expulsion for having been before entry members of an organization advocating violent overthrow or, if they entered since 1950, for having been before entry members of the Communist Party. Since petitioner's last entry was in 1939, and since at the time of none of his entries was he a member of a proscribed organization, petitioner was not excludable by the law existing at the time of any of his entries, and hence he is not expellable on such a ground.

coming of an alien from a foreign place." They concluded, therefore, that the provision expelling aliens for Communist membership "after entry" meant after *any* entry.

This is clearly a non sequitur, somewhat comparable to trying to learn the result of a race by consulting a dictionary for the definition of "horse." A reading of the definition of "entry" in section 101(a)(13) of the Immigration and Nationality Act shows that all it does is to describe *what kind of arrival* constitutes an "entry." It does not determine which of several "entries" is the key to determining status under other provisions of the Act. The phrase "any coming" is used in the section *qualitatively*, as meaning a coming *of any kind* (subject to certain exceptions), as whether for permanent residence, as a visitor, as a seaman, in transit, or as a stowaway. It is a distortion to treat a definition of the *kind of coming* as dispositive of *which particular coming* is referred to by other sections. The fact that an "entry" is "any coming" does not mean that every statutory reference to "entry" means "any entry." When Congress meant "any entry," it felt compelled to say so expressly (*infra*, pp. 17-18).

The case definition of "entry," from which the statutory definition derives, is irrelevant for the same reason. In immigration law, "entry" has "a special technical meaning." *Barber* v. *Gonzales*, 347 U. S. 637, 641; *Mangoang* v. *Boyd*, 205 F. 2d 553, 557. It was, therefore, natural that the codification of immigration law should spell out the meaning of the term. But this technical meaning was spelled out in litigation which

centered about the question of what kind of arrival constitutes an "entry."[5]

The court below relied (R. 38) on the statement in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425, that the word "entry" "includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one." But granted that a first coming is an entry, it does not follow that the first of several entries is the critical one.[6]

In short, all that the statutory and judicial definition of "entry" proves is that petitioner's coming into the country in 1932 was *an entry*. This we do not

[5] E.g., *U. S. ex rel. Claussen* v. *Day*, 279 U. S. 398, and *U.S. ex rel. Stapf* v. *Corsi*, 287 U. S. 129, decided that a resident alien who shipped out as a sailor made an "entry" on returning from a foreign port, although there would have been no "entry" if the voyage had been between United States ports. *Barber* v. *Gonzales*, 347 U. S. 627, held that a coming from an American possession was not an "entry." *Delgadillo* v. *Carmichael*, 332 U. S. 388, and *DiPasquale* v. *Karnuth*, 158 F. 2d 878, held that certain comings from foreign places were not "entries" because the departures were unintentional and unforeseen. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, held that the return of a resident alien from a brief visit abroad is an "entry." *Mangoang* v. *Boyd*, 205 F. 2d 553, cert. den. 346 U. S. 876, held that a coming by one who was not an alien at the time of arrival was not an "entry."

[6] It is true that there is visible in the *Volpe* opinion some of the same confusion shown below in regarding the qualitative meaning of entry as having a bearing on which of several entries is critical. This arose out of the fact that the argument of the petitioner in *Volpe* seems to have been pitched on the premise that a resident alien's return from a brief visit was not actually an entry. The petitioner in *Volpe* apparently did not dispute that if this return was an entry, it, not the first entry, was determinative of petitioner's status. The actual holding in *Volpe* made the last entry the critical one, and is thus in accord with our views.

dispute. But it does not resolve the problem here, which is whether it was *the entry* upon which petitioner's status depends.

B. Petitioner's Last Entry Is the Critical One for Determining His Status

In our view, the provisions of both the Internal Security Act and the Immigration and Nationality Act expelling aliens for Communist Party membership after entry refer to membership after the alien's last entry. This construction follows from the scheme and theory of the deportation legislation and from standard canons of construction. Under it, petitioner is not deportable.

1. It is a general principle of both the present and preceding immigration statutes[7] that once an immigrant has satisfied the admission requirements, he is not thereafter expellable for *pre-entry* conduct or characteristics. From time to time Congress enacts new causes for expulsion to have retroactive effect. The general rule, however, is that the newly-enacted causes do not relate to pre-entry conduct or character. Like the statutory provisions specifically involved in this case, they are by their terms limited to characteristics existing "at or after entry." Similarly, aliens who were excludable by the law at the time of their entry are expellable; they are not expelled for pre-entry conduct which would have excluded them under exclu-

[7] The discussion in this paragraph relates to the general expulsion sections of both the current legislation and the preceding basic immigration law. Sec. 241(a) of the Immigration and Nationality Act, 66 Stat. 204, 8 U. S. C. 1251(a); and sec. 19(a) of the Immigration Act of Feb. 5, 1917, as amended, 39 Stat. 889, 54 Stat. 671, 8 U. S. C. (1940 ed.) 155.

sionary rules enacted after entry. (See *supra*, p. 11, ftn. 4.)

There is obvious reason for this principle that an entry in satisfaction of existing exclusionary laws insulates the alien from expulsion for newly-enacted causes relating to pre-entry character. The admission of the alien represented a specific governmental determination that so far as his pre-existing conduct demonstrated he was a suitable person to reside in this country. To change this determination after the alien has rooted himself in our society would be an act of governmental bad faith.[8] As pointed out in *Berrebi* v. *Crossman*, 208 F. 2d 498, 499: "Even though the past misconduct of an alien might have justified his exclusion at the time of his application for admission, the fact that he was lawfully admitted and lived a law abiding life in this country thereafter, brings him within the different classification provided by law for an alien sought to be deported."

It is also established, however, that a determination of suitability is made with each entry made by the alien. A resident alien who leaves the country even if for only a day is; for the purposes of the immigration laws, a newcomer on his return. He is subject to all current exclusionary rules, and if he enters though then excludable, he is expellable, even though he would not have been subject to deportation if he had not

[8] Of course this insulation is not available if the alien entered without inspection or concealed his being in an excludable class. Such frustrations of the exclusion laws are taken care of by the fact that aliens who enter without inspection or who were in an excludable class at the time of entry, are expellable. Cf. sec. 241(a)(1) and (2) of the Immigration and Nationality Act, 66 Stat. 204, 8 U. S. C. 1251(a)(1) and (2).

stepped across the border. *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206; *Chae Chan Ping* v. *United States (The Chinese Exclusion Case)*, 130 U. S. 581; *Lewis* v. *Frick*, 233 U. S. 291; *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422; *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129; *Lapina* v. *Williams*, 232 U.S. 78; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398.

Since a lawful entry is an insulation against expulsion for pre-entry conduct because it is a determination that such conduct was not disqualifying, and since each entry is such a determination, it follows that the latest entry supplies the applicable insulation. Consistent with this scheme and theory of the immigration laws, expulsion for characteristics existing "at or after entry" must be taken to mean "at or after the last entry." And in fact, in applying the deportation statutes, the cases (last cited) have uniformly treated the last entry or proposed entry as the critical one for determining the alien's status.

In the cited cases, the alien was worse off by reason of this fact. But since the theory of the cases is that the re-entering alien is a newcomer, the same principle making the last entry determinative should apply even in the unusual case where, as here, the alien may thereby be better off.

When Congress wanted to depart from this general scheme making the last entry determinative, it specifically so provided. Only one category, subdivision (13) of section 241(a) of the Immigration and Nationality Act, provides for the expulsion of lawfully admitted aliens for a subsequently enacted cause relating to pre-entry conduct. And in this category,

Congress provided for the deportation of any alien who "prior to, or at the time of *any* entry or at any time within five years after *any* entry, shall have knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law." Thus Congress did distinguish between "after entry" and "after any entry." The fair inference is that where Congress merely said "entry," it meant only the last entry, or at least the last entry for permanent residence, in accordance with the established principle that a reentering alien is a newcomer. "When Congress has the will it has no difficulty in expressing it. . . . When Congress leaves to the judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." *Bell* v. *United States*, 349 U. S. 81, 83.

Nor would this construction enable evasion of the immigration laws by an alien's crossing the border and returning. For if at the time of his return he is within a then excludable class, he will be excluded or, if he nevertheless enters, will be expellable.

2. The interpretation urged by the government would make aliens deportable for Communist Party membership at or after any entry. This obviously is less favorable to aliens than the construction we urge. Since there is at least an ambiguity and the legislative history is not illuminating, our view is supported by the principle that deportation laws should be construed in favor of the alien. *Barber* v. *Gonzales*, 347 U. S. 637; *Delgadillo* v. *Carmichael*, 332 U. S. 388. In *Tan* v. *Phelan*, 333 U. S. 6, 10, the Court stated:

> "We resolve the doubts in favor of that construction because deportation is a drastic meas-

> ure and at times the equivalent of banishment or exile. . . . It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

In addition, the interpretation applied below should be rejected in order to avoid serious constitutional questions (cf. *United States* v. *C.I.O.*, 335 U. S. 106) and arbitrary and unreasonable results (cf. *United States* v. *American Trucking Association*, 310 U. S. 534).

II. THE STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

In No. 5 this Term, *Rowoldt* v. *Perfetto*, 335 U. S. 115, counsel for the present petitioner briefed and argued the unconstitutionality of the legislation requiring deportation of aliens for past membership in the Communist Party. We will not again brief the subject, but if the Court reaches constitutionality, we submit that it should overrule *Galvan* v. *Press*, 347 U. S. 522, and hold the legislation unconstitutional on its face for the reasons stated in our briefs in *Rowoldt*.

The application of the statute in this case imports new constitutional defects. Surely it is a breach of governmental faith to expel an alien for a cause which he divulged on seeking entry and which was held not to exclude him. With full knowledge of petitioner's former connection with the Communist Party, the government decided that he was fit to reside in this coun-

try. That decision caused him to shape his life, take an American spouse, and otherwise fix his roots here. It outrages all feeling that petitioner should now be told that the cause which did not disqualify him from entering and residing here has years later become a reason for disrupting his life and that of his family.

The breach of faith is magnified by the fact that the deportation order is based in part upon the testimony given by petitioner in his entry proceeding. The stale justification that aliens have only themselves to blame for harsh expulsions because they did not become citizens, disappears in the light of the government's failure to process petitioner's citizenship application and the fact that the information he gave to the naturalization examiners also became evidence against him.

Expulsion of petitioner on these facts violates due process because it "shocks the conscience" and "offends the community's sense of fair play and decency." *Rochin* v. *California*, 342 U. S. 165, 173.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

JOSEPH FORER
DAVID REIN
711-14th Street, N. W.
Washington, D. C.
Attorneys for Petitioner

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
APR 2 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, *Petitioner*

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

JOSEPH FORER
DAVID REIN
Attorneys for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, *Petitioner*

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

REPLY BRIEF FOR PETITIONER

The government's thesis is that because "entry" is defined as "any coming," the references to entry in the deportation clauses automatically mean any entry. This proves too much, as can be seen from the text of section 241(a), the deportation section, of the Immigration and Nationality Act.

Subsections 241(a)(1) and (2) of that Act, 8 U. S. C. 1251(a)(1) and (2), provide for the expulsion of any alien who "at the time of entry" was excludable under then existing law or who "entered the United State

without inspection." Among aliens expellable under the first of these subsections are those who entered the United States without a visa or other required entry document. See sec. 212(a)(20), 8 U. S. C. 1182(a)(20).

It cannot be contended, however, that an alien who has been inspected and admitted with a proper visa is deportable merely because on a prior occasion he had entered the United States without inspection or without entry documents and had thereafter left of his own accord. Were the case otherwise, the privilege of voluntary departure, which may be granted under section 244(e), 8 U. S. C. 1254(e), would be meaningless. The purpose of allowing voluntary departure is to enable a person ordered deported as an illegal entrant to re-enter under lawful conditions—a possibility which would otherwise be foreclosed by section 212(a)(17), 8 U. S. C. 1182(a)(17). But such a re-entry would do no good if the alien were still deportable thereafter because his prior entry had been illegal.

In short, "at the time of entry" in the first subdivision of section 241(a) means "at the time of last entry." "Entered the United States without inspection" in the second subdivision of section 241(a) means "last entered the United States without inspection." This leaves nowhere the government's argument that "after entry" in the sixth subdivision of 241(a) necessarily means "after any entry," rather than "after the last entry."

Respectfully submitted,

JOSEPH FORER
DAVID REIN

Attorneys for Petitioner

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
APR 25 1957
JOHN T. FEY, Clerk

No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1956

FRANK BONETTI, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statute involved	2
Statement	3
Argument	5
Conclusion	9

CITATIONS

Cases:

Belfrage, United States ex rel. v. *Kenton*, 224 F. 2d 803 — 5
Berrebi v. *Crossman*, 208 F. 2d 498 — 5
Circella, United States ex rel. v. *Sahli*, 216 F. 2d 33 — 7
Claussen, United States ex rel. v. *Day*, 279 U. S. 398 — 7
Galvan v. *Press*, 347 U. S. 522 — 6, 8, 9
Klig v. *Brownell*, decided April 4, 1957 (C. A. D. C.) — 5
Lewis v. *Frick*, 233 U. S. 291 — 7
Rowoldt v. *Perfetto*, No. 34, this Term — 9
Volpe, United States ex rel. v. *Smith*, 289 U. S. 422 — 5, 6–7

Statutes:

Act of October 16, 1918, 40 Stat. 1012, as amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006) — 2
Immigration and Nationality Act of June 27, 1952, 66 Stat. 163:
- Section 241 (a) (6) (C) — 2, 7
- Section 403 (a) (16), 66 Stat. 163 — 2

Internal Security Act of 1950, Sec. 22, 64 Stat. 1006 — 3, 4, 5
8 U. S. C. (1946 ed.) 155 (b) — 8

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 854

FRANK BONETTI, PETITIONER

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 43–45) is reported at 240 F. 2d 624.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1956 (R. 46). The petition for a writ of certiorari was filed on March 25, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner was properly ordered deported under the immigration statute providing for de-

portation of an alien "who was at the time of entering the United States, or has been at any time thereafter" a member of the Communist Party, where he was shown to have been a member of the Communist Party after his original entry but not after his last readmission for permanent residence after a departure from the country.

2. Whether petitioner's disclosure, at the hearing upon his re-entry, of his past Communist Party membership precludes his subsequent deportation upon that ground.

3. Whether the statute is unconstitutional.

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006), the Act of October 16, 1918 (40 Stat. 1012) provided, at the time involved in this case, as follows:[1]

* * * * *

> Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *

[1] These statutory provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), which recodified and reenacted these provisions without material change. See *id.*, Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *.

* * * * *

Section 4 (a) of Section 22 of the 1950 Act provided:

Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the District of Columbia Circuit (R. 46) affirming the judgment of the District Court for the District of Columbia (R. 7–10) in which the District Court upheld an order of deportation against petitioner. The pertinent findings of fact, here undisputed, may be summarized as follows:

Plaintiff is an alien who initially entered the United States in 1923 for permanent residence and was a member of the Communist Party from 1932–1937 (R. 7–8).[2] He departed from the United States

[2] The Immigration and Naturalization Service has found petitioner's membership to be for the years 1932–1936 (R. 13, 15), but one of petitioner's own statements (see Pet. 5) had extended the period into 1937. The record also discloses that petitioner was the head of a Party unit of up to 15 members (R. 33),

in 1937, giving up any rights for permanent residence that he acquired as a result of the 1923 admission, and he returned to the United States in October 1938 (R. 8). Upon the occasion of his return, he disclosed his former membership in the Communist Party to a board of inquiry and was admitted for permanent residence (R. 8).[3]

In 1952, petitioner was ordered deported by the special inquiry officer of the Immigration and Naturalization Service pursuant to a hearing under a warrant of arrest charging deportability upon the basis of petitioner's membership in the Communist Party (R. 3, 5, 8). Petitioner remained mute and refused to testify during the course of the deportation hearing (R. 8).[4] Petitioner's appeal was dismissed by the Board of Immigration Appeals (R. 8).

The Court of Appeals, upholding the order of deportion, pointed out that the statute provided for deportation by reason of membership in the Communist Party after "entry", not after "the last entry". It noted that the statutory definition of an entry was

---

and that he fought for the Spanish republic from July 1937 to July 1938 with the Lincoln Brigade (R. 22–23, 32).

[3] The statutory provision for exclusion by reason of the single fact of membership in the Communist Party had not yet been enacted in 1938. This provision was not enacted until the Internal Security Act of 1950 (64 Stat. 1006). Petitioner was at first excluded by the board, but later admitted as a quota immigrant, under bond (R. 12). The record discloses that petitioner also left the United States for one day and reentered in the early summer of 1939 (R. 13, 28).

[4] The government presented its own witnesses to identify petitioner's alien registration form and the testimony in his naturalization investigation which disclosed his membership and past activities in the Communist Party (R. 19–20, 25–31).

"any coming" into the United States, as earlier defined in this Court's holding in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, in 1933.

ARGUMENT

1. Although the statute in plain words provides for deportation in the case of Communist Party membership "at the time of entering the United States, or * * * at any time thereafter" (*supra*, p. 3), petitioner would have it apply as if it read after "*last* entering the United States." The condition which petitioner seeks to add to the statute does violence to the language and the purpose of the enactment. It was rejected by the court below and by the Second Circuit in *United States ex rel. Belfrage* v. *Kenton*, 224 F. 2d 803.[5]

---

[5] *Berrebi* v. *Crossman*, 208 F. 2d 498 (C. A. 5), cited by petitioner (Pet. 10), is not in point. There, the alien had concededly not been a Communist Party member either "at the time of entering the United States" in 1948 or at any period after that time. The Court of Appeals there specifically distinguished the *exclusion* provision (which would have applied to Berrebi's membership in Tunisia prior to entering the United States), from the *deportation* provision which required the alien to be a member *at* or *after* entering the United States (208 F. 2d at 499). The Court of Appeals for the District of Columbia Circuit has recently held that one who had been a member of the Communist Party of a foreign country, but had terminated his membership before entry into the United States, was deportable as one who was, in the terms of Section 4 of Section 22 of the 1950 Act, *supra*, p. 3, "a member of any one of the classes of aliens enumerated in section 1 (2)" since past members of *any* Communist Party are in the enumerated classes. *Klig* v. *Brownell*, decided April 4, 1957. On this basis, petitioner would be deportable even if his contention as to last "entry" were correct.

The provision embodies a conclusion by the Congress that the United States should not continue to harbor aliens who, either at the time of entering the United States or after having had the experience of being in this country, have been members of the Communist Party. Past membership in the Communist Party was made a ground for deportation, no matter how long the alien has been here, or how far back his membership (see *Galvan* v. *Press*, 347 U. S. 522). There was, under the 1950 Act, not even the possibility of suspension of deportation. It seems evident, therefore, that Congress did not intend that membership in the Communist Party in the United States should be rendered meaningless, so far as deportation was concerned, because the alien had departed from the country and then returned after the period of his Party membership. And the fact that petitioner's entry in 1938 was as an immigrant rather than as a returning resident alien certainly does not detract from his undesirability under the standards of the 1950 Act.

Both the Second and District of Columbia Circuits relied upon the decision of this Court in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, in which petitioner's pattern of argument was rejected in a reversed form. Volpe's offense was the subject of deportation if committed *before* entry into the United States. Having committed the offense after one entry into the United States but before a later re-entry, he sought to have the words "prior to entry" treated as "prior to the *first* entry." This Court rejected the

attempted departure from the clear and unqualified meaning of the word "entry," stating (289 U. S. at 425):

> [T]he word "entry" * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or *any* subsequent one. * * * [Emphasis added.][6]

This Court's rejection of the attempt to add the word "first" before entry is equally applicable to the present effort to add the word "last" to a statute which uses "entry" in its unqualified form.

Petitioner refers (Pet. 7) to the fact that subdivision (13) of Section 241 (a) of the Immigration and Nationality Act of 1952 provides for the deportation of aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added). He argues that this addition of "any" indicates that, without such language, "after entry" refers only to the last entry. But aside from the fact that this language, which first appeared in the 1952 Act, hardly indicates the intent of Congress in 1950, it seems clear that the primary purpose of this change from the prior law was to reach those who had aided illegal entrants before they—the aiders—had ever come to the United States, and to make sure that the statute covered such aiders no matter at what time they may have carried

[6] See, also, *Lewis* v. *Frick*, 233 U. S. 291, 297; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, 401; *United States ex rel. Circella* v. *Sahli*, 216 F. 2d 33, 37 (C. A. 7).

on their activities—before, after, or at the time of, any entry of theirs.[7]

2. Petitioner's complaint that his deportation was based upon his own testimony, given "at the hearing at which he was adjudicated admissible" (Pet. 2, 11–12), misconceives both the nature of the hearing to which he refers and the ultimate evidence supporting the deportation. As observed *supra* (p. 4, fn. 3), in 1938—the year of petitioner's re-entry—former membership in the Communist Party was not *per se* a basis for exclusion. Petitioner was readmitted under the provisions of the then law. His readmission was not a commitment, binding upon a later Congress, that petitioner's past history could never be a criterion of who should be deemed an undesirable alien. See *Galvan* v. *Press*, 347 U. S. 522. Secondly, in the deportation proceedings, not only was petitioner's former membership in the Communist Party undisputed, but it was proved (in addition to petitioner's statements at the time of his readmission in 1938) by the dis-

[7] The prior statute, 8 U. S. C. (1946 ed.) 155 (b), had covered only those whose activities occurred after their own entry. It read:

"(b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:

"(1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

"(2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law."

closures in petitioner's alien registration forms (R. 19–20, 24) and his testimony in the course of his own efforts to obtain naturalization (R. 25–31).

3. The constitutionality of the statute was sustained in *Galvan* v. *Press*, 347 U. S. 522. The issue before this Court in *Rowoldt* v. *Perfetto*, No. 34, this Term, as to nominal membership in the Communist Party is not involved here, in view of the extensive participation and activity of petitioner who was a member for at least four years and a unit leader. The petition does not claim that he was no more than a nominal member (see Pet. 2, 12).

CONCLUSION

The decision of the court below is correct, and no conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

APRIL 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAR 20 1958
JOHN T. FEY, Clerk

No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1957

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	3
Summary of argument	5
A. "Any coming of an alien from a foreign country to the United States" constitutes an entry under the immigration laws	5
B. The essential purpose of Section 22 of the Internal Security Act was to expel aliens who, like petitioner, have been members of the Communist Party while residents of this country	7
Argument	8
Petitioner was properly ordered deported as an alien who had been, after entry, a member of the Communist Party	8
A. "Any coming of an alien from a foreign country to the United States" constitutes an entry under the immigration laws	9
B. The essential purpose of Section 22 of the Internal Security Act of 1950 was to expel aliens who, like petitioner, have been members of the Communist Party while residents of this country	17
Conclusion	23
Appendix	24

CITATIONS

Cases:

Allessio, United States ex rel. v. *Day*, 42 F. 2d 217	16
Belfrage, United States ex rel. v. *Kenton*, 224 F. 2d 803	16
Bendel v. *Nagle*, 17 F. 2d 719	11
Brancato, United States ex rel. v. *Lehmann*, 239 F. 2d 663	13
Browne v. *Zurbrick*, 45 F. 2d 931	11

Cases—Continued

	Page
Circella, United States ex rel. v. *Sahli*, 216 F. 2d 33, certiorari denied, 348 U. S. 964	13
Claussen, United States ex rel. v. *Day*, 279 U. S. 398	6; 13, 14
Delgadillo v. *Carmichael*, 332 U. S. 388	12
Doukas, United States ex rel. v. *Wiley*, 160 F. 2d 92	13
Fougherouse v. *Brownell*, D. Ore., No. 7331, January 10, 1958	16
Galvan v. *Press*, 347 U. S. 522	8, 22
Gomes v. *Tillinghast*, 37 F. 2d 935	11
Guarneri v. *Kessler*, 98 F. 2d 580	14
Jackson v. *Zurbrick*, 59 F. 2d 937	14
Kessler v. *Strecker*, 307 U. S. 22	7, 17, 21, 22
Klig v. *Brownell*, 244 F. 2d 742, certiorari granted, 355 U. S. 809	9
Lehmann v. *Carson*, 353 U. S. 685	22
Lewis v. *Frick*, 233 U. S. 291	14
Marinaro, Ex parte, 2 F. Supp. 117	14
Medich, United States ex rel. v. *Burmaster*, 24 F. 2d 57	11
Mulcahey v. *Catalanotte*, 353 U. S. 692	22
Rasmussen v. *Robinson*, 163 F. 2d 732	13
Resurreccion-Talavera v. *Barber*, 231 F. 2d 524	13
Rowoldt v. *Perfetto*, 353 U. S. 115	22
Santarelli, United States ex rel. v. *Hughes*, 116 F. 2d 613	13
Schoeps v. *Carmichael*, 177 F. 2d 391, certiorari denied, 339 U. S. 914	13
Siegel, United States ex rel. v. *Reimer*, 23 F. Supp. 643, affirmed, 97 F. 2d 1020	14
Stapf, United States ex rel. v. *Corsi*, 287 U. S. 129	14
Volpe, United States ex rel. v. *Smith*, 289 U. S. 422	5–6, 10, 11–12, 14
Weedin v. *Tayokichi Yamada*, 4 F. 2d 455	11
Wilson v. *Carr*, 41 F. 2d 704	11, 12
Wong You v. *Weedin*, 33 F. 2d 377	11
Zurbrick v. *Woodhead*, 90 F. 2d 991	14

Statutes:

Act of October 16, 1918 (40 Stat. 1012)	2
Alien Registration Act of 1940, Section 23 (a) (54 Stat. 673)	7, 17, 20

Statutes—Continued

	Page
Anarchist Deportation Act of 1918, 40 Stat. 1012, as amended	22
Immigration Act of 1917, 39 Stat. 874, 889, Section 19	10, 14
Immigration and Nationality Act of June 27, 1952 (66 Stat. 163):	
Section 101 (a) (13)	6, 14, 15
Section 241 (a) (6) (C)	2, 8
Section 241 (a) (13)	6, 15
Section 244 (a) (5)	23
Section 403 (a) (16)	2, 8
Section 405 (a)	8
Internal Security Act of 1950, Section 22 (64 Stat. 1006)	2, 4, 5, 7, 8, 9, 19, 21
Miscellaneous:	
Conf. Report, H. Rep. No. 2683, 76th Cong., 3d Sess., p. 9	18
84 Cong. Rec. 10448–9	18
96 Cong. Rec. 12058, 12060	19
96 Cong. Rec. 15287	20
H. Rep. No. 3112, 81st Cong., 2d Sess., p. 48	20
H. Rep. No. 1365, 82d Cong., 2d Sess., p. 32	15
Immigration Service Analyses of—	
S. 3455, p. 241–11–12	16
S. 716, p. 241–8	16
Note, 28 Ill. L. Rev. 425	13
S. 1832, 81st Cong., 2d Sess	19, 20
S. 4037, 81st Cong., 2d Sess	20
S. Rep. No. 1796, 76th Cong., 3d Sess., p. 3	17
S. Rep. No. 2230, 81st Cong., 2d Sess., pp. 5, 16, 23	7, 19, 20
S. Rep. No. 2369, Part 2, 81st Cong., p. 14	20
S. Rep. No. 1137, 82d Cong., 2d Sess., p. 4	15

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 36–38) is reported at 240 F. 2d 624.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1956 (R. 39). The petition for a writ of certiorari was filed on March 25, 1957, and granted on December 16, 1957 (355 U. S. 901). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether petitioner was properly ordered deported under the immigration statute providing for deporta-

tion of an alien "who was at the time of entering the United States, or has been at any time thereafter" a member of the Communist Party, where it appears that he was a member of the Communist Party after his original entry, but not after his last readmission for permanent residence (which took place following a departure from the country).

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006), the Act of October 16, 1918 (40 Stat. 1012) provided, at the time here relevant, as follows:[1]

* * * * *

> Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *.

* * * * *

Section 4 (a) of Section 22 of the 1950 Act provided:

---

[1] These provisions, although technically repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), were recodified and reenacted by the 1952 Act without material change. See *id.*, Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

> Any alien who was at the time of entering the United States, or has been at any time thereafter * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the District of Columbia Circuit (R. 39) affirming the District Court's decision (R. 7–10) sustaining an order of deportation against petitioner. The pertinent findings of fact, here undisputed, may be summarized as follows:

Petitioner is an alien who initially entered the United States for permanent residence in 1923. He was a member of the Communist Party in this country from 1932–1936 (R. 7–8).[2] During that period he distributed party literature (R. 24, 27), paid dues (R. 22), solicited membership for the party (R. 26), and was at various times organizer, secretary and director of a unit consisting of 12 to 15 members (R. 26, 34).

Petitioner departed from the United States in 1937 and fought in the Spanish Civil War from July 1937 to July 1938 (R. 24–25, 33–34). In 1938, he reapplied for admission to the United States as an

[2] The Immigration and Naturalization Service found petitioner's membership to be for the years 1932–1936 (R. 13, 15);

immigrant, having previously abandoned any rights acquired as the result of his 1923 admission (R. 8).

At a hearing before a special board of inquiry, petitioner disclosed his former membership in the Communist Party (R. 33–35). He was at first excluded by the board, but later admitted as a quota immigrant (R. 12).[3] After his 1938 entry, petitioner made one further departure and reentry, in 1939 (R. 13).[4]

In 1952, petitioner was charged with being deportable as one who had been, after entry, a member of the Communist Party. At the deportation hearing, the Government offered the following proofs: petitioner's statements at his hearing on the 1938 application for admission (R. 33–35); petitioner's alien registration form, in which he admitted membership in the Communist Party from 1932 to 1936 (R. 11); and petitioner's testimony in his application for naturalization in 1943, in which he disclosed his membership and past activities in the Communist Party (R. 19–30). Petitioner did not testify (R. 17). He was found deportable on the charge made (R. 10–14), and the Board of Immigration Appeals sustained the order (R. 14–15).

---

one of petitioner's own statements extends the period into 1937 (R. 18, 35).

[3] The statutory provision for exclusion solely by reason of membership in the Communist Party had not been enacted in 1938. This provision was first enacted in the Internal Security Act of 1950 (64 Stat. 1006).

[4] The occasion, it appears, was a brief trip to Mexico (R. 30–31).

SUMMARY OF ARGUMENT

The question presented by this case is whether petitioner's Communist Party membership from 1932–1936, following his original entry into the United States in 1923, subjects him to deportation under Section 22 of the Internal Security Act of 1950, irrespective of the absence of proof of membership in the Communist Party following his re-entries in 1938 and 1939. We submit that membership in the Communist Party following *any* entry into the United States is ground for deportation under the 1950 Act.

A. "ANY COMING OF AN ALIEN FROM A FOREIGN COUNTRY TO THE UNITED STATES" CONSTITUTES AN ENTRY UNDER THE IMMIGRATION LAWS

1. Petitioner would have the plain language of Section 22 of the Internal Security Act of 1950, providing for the deportation of aliens who were Communist Party members "at the time of entering the United States or * * * at any time thereafter" (see *supra*, p. 3), interpreted as if it read "after *last* entering the United States." The rationale of prior decisions of this Court construing the word "entry," as used in the immigration laws, disposes of such a construction.

United States ex rel. Volpe v. *Smith*, 289 U. S. 422, involved an alien who had first entered this country in 1906. In 1925 he was convicted of a crime involving moral turpitude (counterfeiting). He left the country in 1928 for a visit to Cuba and returned shortly thereafter. In 1930, he was held deportable under Section 19 of the Immigration Act of 1917

as an alien convicted of a crime involving moral turpitude "prior to entry." In this Court, *Volpe* contended that "prior to entry" should be construed as "prior to the first entry". The Court rejected this contention, holding (289 U. S. at 425) that "the word 'entry' * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or *any* subsequent one." (Emphasis added.) To the same effect, see *United States ex rel. Claussen* v. *Day*, 279 U. S. 398.

The Court's rejection, in *Volpe* and *Claussen*, of the then attempt to modify "entry" by adding the word "first" similarly requires rejection of the present effort to confine this statutory term—again used in unqualified form—to the *last* entry.

2. Although its provisions are not directly involved in the instant proceedings, it is significant that the Immigration and Nationality Act of 1952 defines entry, in complete accord with the principles announced in the *Volpe* case, as "any coming of an alien into the United States, from a foreign port or place * * *." Section 101 (a) (13). In view of this explicit definition, there is no substance to petitioner's contention that the use of the words "any entry" in Section 241 (a) (13) of the 1952 Act—which renders deportable aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added)—indicates that the phrase "after entry," when unaccompanied by the word "any," refers only to the last entry. It appears, moreover, that the primary purpose of the quoted language in Section 241 (a)

(13) was to assure deportation of the described "aiders" regardless of when they carried on their unlawful activities—before, after, or at the time of any entry of theirs.

B. THE ESSENTIAL PURPOSE OF SECTION 22 OF THE INTERNAL SECURITY ACT WAS TO EXPEL ALIENS WHO, LIKE PETITIONER, HAVE BEEN MEMBERS OF THE COMMUNIST PARTY WHILE RESIDENTS OF THIS COUNTRY

Section 23 (a) of the Alien Registration Act of 1940, 54 Stat. 673, was expressly adopted to overcome this Court's decision in *Kessler* v. *Strecker,* 307 U. S. 22, holding that past membership of an alien in a proscribed organization was not a ground for deportation under the 1918 Act. The philosophy of the provision, as explained by its sponsors, was that this country would best be served by replacing those aliens who had fallen prey to Communism in this country with those aliens seeking entry who were free of any such taint.

Section 22 of the Internal Security Act of 1950 carried this approach a step further by making proof of membership in the Communist Party, *per se,* a ground for deportation. The purpose was to "strengthen the provisions of existing law with respect to the exclusion and deportation of subversive aliens." S. Rep. No. 2230, 81st Cong., 2d Sess., p. 5. Having determined that the strength of the Communist Party in this country was concentrated in its alien membership, Congress deliberately aimed to expel any alien who had knowingly been a member of the Communist movement at any time during the period of his residence in this country.

Petitioner's 1938 entry, though it was under a new quota unrelated to his original entry, did not remove him from the reach of the 1950 Act. His readmission in 1938 (at which time he was not excludable merely for past membership in the Communist Party) was no commitment that his past history could never be made the basis for deportation under a later statute. *Galvan* v. *Press*, 347 U. S. 522. Had petitioner never left the country, he would have become deportable. Neither the language nor the logic of the statute justifies the conclusion that he acquired immunity because he left and returned.

ARGUMENT

PETITIONER WAS PROPERLY ORDERED DEPORTED AS AN ALIEN WHO HAD BEEN, AFTER ENTRY, A MEMBER OF THE COMMUNIST PARTY

Petitioner was ordered deported under the Internal Security Act of 1950 as an alien who "at the time of entering the United States, or * * * at any time thereafter" was a member of the Communist Party.[5] The issue is whether his admitted membership in 1932–1936, subsequent to his original entry into this country in 1923, rendered him deportable under that Act even though there is no evidence of Communist Party membership following his subsequent readmis-

[5] Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, was repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), which recodified and reenacted its provisions without material change. See Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C). The 1950 Act applies to this case under the savings clause of the 1952 Act (Section 405 (a)) since the order of deportation was issued prior to the effective date of the 1952 Act.

sions in 1938 and 1939. The critical issue is thus a very limited one relating only to the construction of the word "entry" as it is used in the immigration laws. It is the Government's position that, having been a member of the Communist Party after his entry in 1923, petitioner falls explicitly within the class of aliens made deportable under that provision, irrespective of the absence of proof of such membership following subsequent re-entries. In our view, membership in the Communist Party following *any* entry into the United States is ground for deportation under the 1950 Act whether such entry be the first or last coming of the alien to this country.[6] We rely upon this Court's construction of the word "entry" in analogous situations and the Congressional purpose, expressed in Section 22 of the Internal Security Act of 1950, to deport aliens who, for any length of time, were members of the Communist Party while residents of this country.

A. "ANY COMING OF AN ALIEN FROM A FOREIGN COUNTRY TO THE UNITED STATES" CONSTITUTES AN ENTRY UNDER THE IMMIGRATION LAWS

1. Although Section 22 of the Internal Security Act of 1950 provides in plain words for deportation in the case of aliens who were Communist Party members "at the time of entering the United

[6] We do not rely on the rationale of the Court of Appeals for the District of Columbia Circuit in *Klig* v. *Brownell*, 244 F. 2d 742, certiorari granted, 355 U. S. 809 (rendered moot by withdrawal of the outstanding order of deportation), to the effect that one who was a member of a Communist Party *prior* to a last entry before 1950 was deportable under the 1950 Act.

States or * * * at any time thereafter" (see *supra*, p. 3), petitioner would have it apply as if it read "after *last* entering the United States". Variants of this contention have been before this Court on previous occasions and uniformly rejected. These prior decisions answer petitioner's argument here.

In *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, the alien had originally entered the United States in 1906. In 1925, he was convicted of a crime involving moral turpitude (counterfeiting) and imprisoned. In 1928, he left the country for a visit to Cuba and returned shortly thereafter. In 1930, deportation proceedings were instituted against him under Section 19 of the Immigration Act of 1917, 39 Stat. 874, 889, which provided in pertinent part that "any alien who was convicted * * * *prior to entry*, of a felony * * * involving moral turpitude * * * shall * * * be * * * deported" (emphasis added). Having committed the offense more than five years after his original entry into the United States[7] but before a later reentry, Volpe argued that he was not subject to deportation. He contended that the words "prior to entry" in Section 19 meant "prior to the *first* entry", just as petitioner here makes the converse argument that the words "entering the United States" be modified to read "after *last* entering the United States".

The issue thus posed in the *Volpe* case had previously resulted in conflicting decisions in the Courts of Appeals. Some had reasoned that "the deportation

[7] This circumstance foreclosed deportation proceedings geared to his original entry.

which follows conviction or admission of a crime committed before entry refers to a conviction (if not also to a crime) occurring outside of this country", and that a crime involving moral turpitude committed in the United States could not be treated as a crime "prior to entry" constituting grounds for deportation under the 1917 Act. *Browne* v. *Zurbrick,* 45 F. 2d 931, 933 (C. A. 6); *Wong Yow* v. *Weedin,* 33 F. 2d 377, 379 (C. A. 9); *Wilson* v. *Carr,* 41 F. 2d 704, 707 (C. A. 9). In the *Carr* case, the Ninth Circuit said that "it seems shocking that an alien should be deported for a crime committed in this country, at any time during his natural life, simply because years later he crossed the international boundary line for some temporary purpose. We do not think that Congress so intended".

Other cases, however, had held that the "prior-to-entry" provision of the 1917 Act should be applied with equal force whether the alien committed the offense here or abroad. *United States ex rel. Medich* v. *Burmaster,* 24 F. 2d 57 (C. A. 8); *Bendel* v. *Nagle,* 17 F. 2d 719, 720 (C. A. 9); *Weedin* v. *Tayokichi Yamada,* 4 F. 2d 455 (C. A. 9); *Gomes* v. *Tillinghast,* 37 F. 2d 935, 936 (D. Mass.). The Seventh Circuit, in the *Volpe* case, had followed this latter view, pointing out that (62 F. 2d 808, 811):

> If there be any basis for distinguishing between offenses committed abroad and those committed in the United States, *it would seem that Congress might well have viewed the latter as the more reprehensible. For naturally, counterfeiting by the alien abroad, while conduct over which Congress would hardly be enthusi-*

> *astic, would be less irksome, less provocative of action by Congress than indulging in a similar pastime in the United States.* [Emphasis added.]

This Court, in *Volpe*, resolved the conflict by rejecting any attempted departure from the clear and unqualified meaning of the word "entry", saying (289 U. S. at 425):

> We accept the view that the word "entry" * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one. * * * [Emphasis added.][8]

This ruling was made despite the fact that such a construction—as noted by the lower courts taking the contrary position—would mean that, while an alien who had never left this country could not be deported for a crime involving moral turpitude for which he was convicted more than five years after entry, he would subject himself to deportation by a departure and reentry. See *Wilson* v. *Carr, supra.* The Court pointedly observed (289 U. S. at 425–426):

> Aliens who have committed crimes while permitted to remain here may be decidedly more objectionable than persons who have transgressed laws of another country.
>
> It may be true that if Volpe had remained within the United States, he could not have been expelled because of his conviction of crime

[8] This definition of entry must be read in conjunction with this Court's later opinion in *Delgadillo* v. *Carmichael*, 332 U. S. 388, holding that departure to a foreign country must be voluntary before a return to this country can be said to constitute an entry. No such issue is involved here.

> in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of reentry. In sufficiently plain language Congress has declared to the contrary.

As a contemporary law journal viewed the decision, "the Supreme Court ha[d] at least made the law conform to the preponderant Congressional and lay thought of the day." Note, 28 Ill. L. Rev. 425, 427–428.[9]

In *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, this Court had before it a case in which an alien had originally entered the United States in 1912 and last reentered from a foreign port in 1918. In 1921, he entered a plea of guilty to manslaughter committed in the United States and was sentenced to imprisonment for more than one year. "The question for decision", the Court said (p. 400), was "whether petitioner was sentenced within five years after his entry into the United States." The thrust of the petitioner's argument was that the word "entry" should be read as meaning "*first* entry" under the Act. The Court disagreed, stating that "in order

[9] The Courts of Appeals have uniformly recognized the continuing vitality of the *Volpe* rationale. See, *e. g.*, *Resurreccion-Talavera* v. *Barber*, 231 F. 2d 524, 525–526 (C. A. 9); *United States ex rel. Circella* v. *Sahli*, 216 F. 2d 33 (C. A. 7) (alien reentered after one days absence), certiorari denied, 348 U. S. 964; *Schoeps* v. *Carmichael*, 177 F. 2d 391 (C. A. 9), certiorari denied, 339 U. S. 914; *United States ex rel. Santarelli* v. *Hughes*, 116 F. 2d 613, 615–616 (C. A. 3); *Rasmussen* v. *Robinson*, 163 F. 2d 732 (C. A. 3); *United States ex rel. Doukas* v. *Wiley*, 160 F. 2d 92, 95 (C. A. 7); cf. *United States ex rel. Brancato* v. *Lehmann*, 239 F. 2d 663, 665 (C. A. 6).

that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place [and] * * * when [petitioner] landed at Boston on his return from South America and Cuban ports, he made an entry into the United States within the meaning of the Act" [10] (279 U. S. at 401). It concluded that he was deportable, under Section 19 of the 1917 Act, for conviction of a crime involving moral turpitude occurring within five years of such entry. See, also, *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 132; *Lewis* v. *Frick*, 233 U. S. 291, 297.

Thus, in both the *Volpe* and *Claussen* cases, this Court rejected the attempt to add the word "first" before the word "entry", as the latter term is used in Section 19 of the Immigration Act of 1917. The Court, no less, should reject the present effort to add the word "last" to a statute which also uses "entry" in its unqualified form.

2. Although the Immigration and Nationality Act of 1952 is not directly involved in the present proceedings, it is significant that the definition of "entry" in that act is in complete accord with the principles enunciated by this Court in *Volpe*. Section 101 (a) (13) of the 1952 Act defines entry, so far as here

[10] The *Claussen* analysis of "entry" has been followed by the lower courts in cases where the crime was committed in the United States within five years after a reentry, but more than five years after original entry, even where the absence from the United States was a matter of hours or days. See *e. g.*, *Jackson* v. *Zurbrick*, 59 F. 2d 937 (C. A. 6); *Guarneri* v. *Kessler*, 98 F. 2d 580 (C. A. 5); cf. *Zurbrick* v. *Woodhead*, 90 F. 2d 991, 992 (C. A. 6); *Ex parte Marinaro*, 2 F. Supp. 117, 118 (W. D. N. Y.); *United States ex rel. Siegel* v. *Reimer*, 23 F. Supp. 643, 644 (S. D. N. Y.), affirmed, 97 F. 2d 1020 (C. A. 2).

material, to mean "any coming of an alien into the United States, from a foreign port or place".

The reports on the Act point out (H. Rep. No. 1365, 82d Cong., 2d Sess., p. 32; S. Rep. No. 1137, 82d Cong., 2d Sess., p. 4):

> The bill defines the term "entry" as precisely as practicable, giving due recognition to the judicial precedents. Thus *any coming of an alien from a foreign port or place or an outlying possession into the United States is to be considered an entry,* whether voluntary or otherwise, unless the Attorney General is satisfied that the departure of the alien, other than a deportee, from this country was unintentional or was not voluntary. [Emphasis added.]

Petitioner's attempt to rely upon the 1952 Act to support his definition of entry as meaning exclusively the last entry is thus misplaced. He points to Section 241 (a) (13) of the 1952 Act which provides for the deportation of aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added), contending that this addition of "any" indicates that "after entry" normally refers only to the last entry. This is not a permissible inference in the face of the explicit definition of entry in Section 101 (a) (13). Moreover, it seems clear that the primary purpose of the language in Section 241 (a) (13) was to reach those who had aided illegal entrants before they—the aiders—had even come to the United States, and to make certain that the statute covered such aiders no matter the time when they may have carried out their activities—

whether before, after, or at the time of any entry of theirs. See Immigration Service Analyses of S. 3455, p. 241–11–12 and of S. 716, p. 241–8. Under the present statute, as under the prior one, "entry" means "any entry", initial, intermediate or final.

Other courts which have had the issue before them have agreed with the decision below and have ruled that proscribed activities taking place after an initial entry render an alien deportable for conduct "after entry", even though such activities may antedate a subsequent entry. In *United States ex rel. Belfrage* v. *Kenton,* 224 F. 2d 803, the Second Circuit, dealing with a situation similar to that here involved stated (224 F. 2d at 805):

> * * * we think the plain language of the pertinent statute [1952], read as it should be in the light of the definition of "entry" in Section 101 (a) (13) of the same Act, * * * leaves no fair room for doubt that Congress did intend to make membership of an alien in the Communist Party of the United States after any "entry" a lawful ground for an order of deportation. * * *

In *Fougherouse* v. *Brownell,* D. Ore., No. 7331, January 10, 1958, the alien, following an initial entry in 1924 without a visa, became a member of the Communist Party in the years 1936–1938. He thereafter departed and reentered with a visa in 1940. On these facts, the district court found "that either entry is a sufficient foundation upon which to lay a charge of Communist membership after entry", under the 1950 Act. Cf. *United States ex rel. Allessio* v. *Day,*

42 F. 2d 217 (C. A. 2) (deportation for conviction, after entry, of two crimes involving moral turpitude, where second conviction postdated a departure and reentry).

B. THE ESSENTIAL PURPOSE OF SECTION 22 OF THE INTERNAL SECURITY ACT OF 1950 WAS TO EXPEL ALIENS WHO, LIKE PETITIONER, HAVE BEEN MEMBERS OF THE COMMUNIST PARTY WHILE RESIDENTS OF THIS COUNTRY

The construction of the statute as applying to any entry, including the first as well as the last, carries out the Congressional purpose as it is unmistakably revealed in the legislative history of the 1940 and 1950 Acts.

Section 23 (a) of the Alien Registration Act of 1940 was adopted to overcome the decision of this Court in *Kessler* v. *Strecker*, 307 U. S. 22, which held that past membership of an alien in a proscribed organization was not ground for deportation under the 1918 Act. See S. Rep. No. 1796, 76th Cong., 3d Sess., p. 3, stating that:

> Section 23 amends the act of October 16, 1918, which provides for the exclusion and deportation from the United States of aliens who are members of the anarchistic and similar classes, so as to provide that no alien shall be admitted to the United States who has at any time been a member of such classes, *and to also provide that any alien who has been a member of such classes at any time after his admission to the United States (for no matter how short a time or how far in the past so long as it was after the date of entry), shall be deported.* [Emphasis added.]

This statement of purpose was repeated in the Conference Report, H. Rep. No. 2683, 76th Cong., 3d Sess., p. 9.

As Representative Hobbs, one of the sponsors of the 1940 amendment explained (84 Cong. Rec. 10448–9):

> I shall give the underlying philosophy of this section. It is that in this day and time we have floods of applications from perfectly good aliens who want to come here and make their homes and make the same splendid contribution to our civilization that good aliens have throughout the ages. This country has been builded by good aliens who have come here and have worked wonderfully with the good people of this Nation.
>
> We are all aliens, if you trace the family tree far enough, so we have no prejudice against aliens. With the world to select from, with the cream of the alien world seeking admission, when we are unable to accommodate millions because of our quota limitations, why not select the best? Why insist upon keeping some of the worst? They may have sinned only once, but there are thousands who have never sinned. I prefer those. You may as well say that one slip, one sin, does not militate against chastity. No matter how long since, nor for how short a time, anyone may have knowingly and voluntarily strayed from the straight and narrow path of virtue, he cannot be sinless. Of course there is virtue in sincere repentance. Many really reform. Forgiveness is a divine attribute, which we should practice whenever

> possible. We are perfectly willing to forgive every one of those aliens who brought or bring themselves within the purview of this title. This title inflicts no punishment upon any of them: it says to them, "Go and sin no more".
>
> They came to our home and plotted the destruction of our Government that bade them welcome, but all we do here is to send them—not to prison or gallows—but back to their own home.
>
> Though we deal only in such kindly fashion with them, we feel in duty bound to prefer those who have never been guilty of allowing themselves to be inoculated with the poison virus of those alien isms that seek to destroy our government by violence. That is the issue.

This philosophy was carried one step further by Section 22 of the Internal Security Act, which made proof of membership in the Communist Party, without more, ground for deportation. Section 22 originated in S. 1832, 81st Cong., 2d Sess., which was passed by the Senate on August 9, 1950, without debate (96 Cong. Rec. 12058, 12060). S. Rep. No. 2230, 81st Cong., 2d Sess., pointed out that the basic purpose of the legislation was to "strengthen the provisions of existing law with respect to the exclusion and deportation of subversive aliens" (p. 5), and that "the subversive alien is deportable as a member of a class of excludable subversives at any time after entry, whether or not membership in the class has ceased" (p. 23). After summarizing and quoting from the testimony of former high officials of the Communist Party during the 1949 hearings, the report set forth

the conclusions upon which this legislative determination was based, declaring (p. 16): [11]

> From the statements made before the subcommittee, as well as the general evidence gathered—the history of the Communist movement, the changes of its policies, the manner of its expression, the utterances of the Comintern leadership—*the conclusion is inescapable that the Communist Party and the Communist movement in the United States is an alien movement, sustained, augmented, and controlled by European Communists and the Soviet Union. The severance of this connection and the destruction of the life line of communism becomes, therefore, substantially an immigration problem.* [Emphasis added.]

The bitter debate over the 1950 internal security bill did not relate to Section 22. In fact, the dissenting minority of the Senate Committee on the Judiciary stated: "[W]e do not quarrel with the provision * * * for the exclusion of alien members of the Communist Party of the United States, or with the later provision [Section 22 of the Internal Security Act] for their deportation. It is undisputed that the Communists of the world, including the United States, are the fifth column allies of the Soviet Union." S. Rep. No. 2369, Part 2, 81st Cong., 2d Sess., p. 14.

In sum, Section 23 (a) of the Alien Registration

---

[11] S. 1832 was incorporated in the Senate Internal Security Act of 1950 (S. 4037, 81st Cong., 2d Sess.). Section 22 was not contained in the Internal Security bill at it passed the House (see H. Rep. 3112, 81st Cong., 2d Sess., p. 48; 96 Cong. Rec. 15287). It was added by the Senate and included in the conference substitute.

Act of 1940 and Section 22 of the Internal Security Act of 1950 were adopted because Congress was overwhelmingly of the opinion that the greatest strength of the Communist Party in this country lay in its alien membership. Congress concluded that the most effective step would be to expel all aliens who had been knowingly affiliated, at any time, with the Communist movement in this country. The 1940 amendment overcame the *Kessler* case to reach this end, and the 1950 Act established that past membership in the Communist Party, *per se*, brought an alien within the deportable class.

It may be suggested that even if entry may be construed as the first or last coming in those cases where the returning alien seeks readmission, and is readmitted, under his previously established status, it should not be so construed in this case. Here, it may be pointed out, petitioner's reentry in 1938 was not dependent upon his original entry, but was a new entry as a quota immigrant. This, it might be argued, gave him new status unmarred by prior Communist Party affiliation. Such an argument, however, misinterprets the effect of the readmission in 1938 and overlooks the plain purpose of the Internal Security Act of 1950. Even though petitioner's entry in 1938 was under a new quota not connected with his original entry, he was still within the class at whom the 1950 Act was aimed: aliens who, while within the United States, were members of the Communist Party. The 1938 entry did not wipe out the fact of the previous affiliation. When petitioner was admitted in September, 1938, the law then in effect (Anarchist Deporta-

tion Act of 1918, 40 Stat. 1012, as amended) provided only for the exclusion of aliens who, at the time of their entry, were members of organizations advocating the overthrow of the government by force and violence; it did not exclude those who, prior to entry, had terminated their membership in such organizations. Cf. *Kessler* v. *Strecker*, 307 U. S. 22, 29. Hence, past affiliation was not a ground for petitioner's exclusion in 1938.[12] But the 1938 readmission of petitioner was not a commitment, binding upon a later Congress, that his past history could never be the criterion of desirability. If petitioner had not departed from the United States in 1937, he would unquestionably have become subject to deportation as a result of the passage of the 1940 and 1950 Acts. *Galvan* v. *Press*, 347 U. S. 522, 529–532; *Lehmann* v. *Carson*, 353 U. S. 685; *Mulcahey* v. *Catalanotte*, 353 U. S. 692.[13] Surely there is no reason why he should acquire immunity because he *did* leave and then return. The fact remains that he

[12] Moreover, the statutory provision for exclusion and deportation by reason of the single fact of membership in the Communist Party was not enacted until the Internal Security Act of 1950.

[13] The constitutionality of Section 22 was sustained by this Court in *Galvan* v. *Press*, 347 U. S. 522. In *Rowoldt* v. *Perfetto*, 355 U. S. 115, the Court did not impair that holding, but decided only that Rowoldt was not a member of the Communist Party within the contemplation of the statute. The issue of membership is not pressed here, and understandably so in view of the extensive participation and activity of petitioner who was a member for at least four years and a unit leader. The issue of constitutionality was extensively briefed by the Government in its Supplemental Brief on the *Rowoldt* reargument, No. 5, October Term, 1957, pp. 24–77.

is an alien who, while enjoying the benefits of United States residence, joined the Communist Party. He is of the group which Congress considers undesirable. As a member of that group, he was properly ordered deported.[14]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,
Solicitor General.

MALCOLM ANDERSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

MARCH 1958.

[14] On May 16, 1956, petitioner moved the Board of Immigration Appeals to reopen the deportation proceeding so that he might apply for suspension of deportation. The record, however, was unavailable at that time, being before the Court of Appeals on petitioner's appeal from the order of deportation, and on June 7, 1956 the Board denied the motion on that ground without reaching its merits (Appendix, *infra*, p. 24). This action does not preclude petitioner from seeking the discretionary relief of suspension of deportation under Section 244 (a) (5) of the Immigration and Nationality Act of 1952, 66 Stat. 215, if this Court rules, as we contend, that petitioner is deportable under Section 22 of the Internal Security Act of 1950.

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

JUNE 7, 1956.

File: A-12731O6—Los Angeles

IN THE MATTER OF FRANCESCO GUISEPPE BONETTI

In deportation proceedings

In behalf of respondent: Aubrey I. Finn, Esquire, 6331 Hollywood Boulevard, Hollywood 28, California.

This case comes forward pursuant to counsel's motion dated May 16, 1956 requesting reopening of the proceedings for the purpose of affording the respondent an opportunity to apply for the discretionary relief of suspension of deportation. Attached to counsel's motion is a self-explanatory affidavit subscribed and sworn to by the respondent on May 16, 1956. This Board is unable to consider this motion on its merits, inasmuch as the record is not available. It appears that the record relating to the respondent is presently before the United States Court of Appeals for the District of Columbia.

The motion and oral argument on the same will be denied, inasmuch as the record is not available. Moreover, the case is presently pending in the United States Court of Appeals for the District of Columbia. Accordingly, the following order will be entered.

ORDER: It is ordered that the motion and oral argument on the same be denied.

LIBRARY
SUPREME COURT. U. S.

FILED
APR 7 1958
JOHN T. FEY, Clerk

No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1957

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
ROGER FISHER,
Assistant to the Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 94

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

There are a number of legislative materials bearing on the issue of statutory construction of Section 22 of the Internal Security Act of 1950 involved in this case which are either not quoted or not referred to in the respondent's brief. For the convenience of the Court during oral argument, and in the consideration of the case, such materials are now presented, without argument, in this memorandum.

The 1950 Act here involved was the sum of three separate legislative enactments, each of which bears on the question of whether the deportation provisions were intended to apply only to those aliens who had been members of the described organizations since

last entering the United States. These acts, and the substance of their provisions here relevant, are:

I. The Act of October 16, 1918—
which provided for the deportation of aliens who were at the time of entering the United States or had thereafter become members of organizations which advocated the overthrow by force and violence of the Government of the United States;

II. The Alien Registration Act of 1940—
which provided that the deportation provisions would apply to aliens who were no longer members of subversive organizations; and

III. The Internal Security Act of 1950—
which added, as a deportable class of aliens, those who after entering the United States had been members of the Communist Party of the United States.

The additional legislative materials to which reference is made are the following. (Throughout this memorandum where matter appears in bold face type the emphasis has been added.)

I

THE ACT OF OCTOBER 16, 1918

1. Text of the Act (40 Stat. 1012):

CHAP. 186.—An Act To exclude and expel from the United States aliens who are members of the anarchistic and similar classes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That aliens who are

anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States.

SEC. 2. **That any alien who,** at any time after entering the United States, **is found to have been at the time of entry, or to have become thereafter,** a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. **The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.**

SEC. 3. **That any alien who shall,** after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act, **thereafter return to or enter the United States** or attempt to return to or to enter the United States **shall be deemed guilty of a felony,** and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant of the Secretary of Labor, **and deported** in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen.

Approved, October 16, 1918.

2. Excerpt from Congressional debate on Section of the 1918 Act (56 Cong. Rec. 8122):

Mr. WALSH. I think this is proper punishment to inflict upon an anarchist who comes to this country and remains here and then is deported; but I wondered what position an alien would be in who had possibly unwittingly joined an organization and had been deported, and when he found that by joining that organization he had brought down that punishment on his head he had really and sincerely reformed and had cast aside all affiliation with that organization and had revised his belief and his practices. He possibly may have left property in this country or a family. Now, if he should attempt to reenter the country there would be no opportunity, as I understand it, for him to show that he was no longer anarchistic in sentiment. The mere fact that he was found guilty on attempting to return to the country would

make him amenable to this penalty, and, further, after he had served his sentence and was seeking to return, after he gets out the Secretary of Labor can again deport him.

The purpose of my inquiry is to ascertain whether there is in existing law or in the proposed law anything that would permit a man who might have been an anarchist when he was deported; but who had sincerely reformed and possibly had proven it in the country to which he had been deported, and had been during the period of his deportation a loyal supporter of that Government—**is there anything that would permit him to come back into the country under the existing law or under this proposed law?**

MR. BURNETT. **I think not; and I do not think we should adopt anything that would,** because it would open the door to too many cases of pretended reformation. * * *

II

SECTION 23 OF THE ALIEN REGISTRATION ACT OF 1940

1. Text (54 Stat. 673):

SEC. 23. (a) The first paragraph of section 1 of the Act entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes", approved October 16, 1918, as amended, is amended to read as follows:

"That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:".

(b) Section 2 of such Act of October 16, 1918, as amended, is amended to read as follows:

"SEC. 2. **Any alien who was at the time of entering the United States, or has been at any time thereafter,** a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. **The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.**"

2. Text of prop ed amendment offered by Mr. Gwynne (84 Cong. Rec. 10448):

* * * * *

* * * "*Provided, however,* That the fact of prior membership in any organization, association, society, or group referred to in section 1 of this title shall not of itself require deportation, if the said alien shall prove, first, that he had ceased to be a member of such organization, association, society, or group at least 5 years prior to the institution of the deportation proceedings against him; and, second, that such termination of his membership was in good faith and not for the purpose of preventing deportation."

3. Excerpt from statement by Mr. Gwynne in support of his proposed amendment (84 Cong. Rec. 10448):

* * * * *

You might have a situation such as this: An alien might in some unfortunate moment join a prohibited organization. He might be a member one day and resign, and thereafter be active in his opposition to that type of organization. Yet 25 years later, if that fact should be proved, the bill as it is now would require his deportation.

* * * * *

4. Statement by Mr. Hobbs in support of the bill and in opposition to Mr. Gwynne's proposed amendment. Much of this is quoted in Respondent's Brief, pages 18–19. The concluding sentence of that statement was as follows (84 Cong. Rec. 10449):

* * * * *

* * * Title III will help our immigration authorities to preserve America for real Americans, and for those who long to become real Americans—**who have never sinned** by espousing the cause of assassination of our officials or Government. [Applause.]

5. Statement by Senator Connally on behalf of the Senate conferees (86 Cong. Rec. 8343):

* * * * *

This provision refers to membership in communistic or other societies which advocate the overthrow of government by force or violence. In other words, if an alien seeks entry into the United States, and he is at the time a member of a communistic or anarchistic organization which advocates the overthrow of government, we exclude him; but if he enters anyway, and thereafter joins one of these organizations, he is then deportable, and he cannot avoid prosecution by

saying, "Well, I have quit," because **if he ever has been a member since coming into the country he is deportable.**

* * * * *

6. Statement by Mr. Hobbs on behalf of the House conferees (86 Cong. Rec. 9032):

> * * * The pending measure amends that law so that it will provide that any alien who at any time after his entry into the United States shall have been a member of any such organization shall be deported. Therefore, after this bill becomes law, it will be perfectly clear that any alien who has ever been a member of such an organization before coming to this country cannot enter, or if at the time of his entry or at any time thereafter he has been, even for 1 minute, a member of such an organization he shall be deported. * * *

* * * * *

III

SECTION 22 OF THE INTERNAL SECURITY ACT OF 1950

1. The relevant text is given in Respondent's Brief at pages 2–3.

2. An excerpt from the Senate Report is given in Respondent's Brief at page 20.

IV

IMMIGRATION AND NATIONALITY ACT OF 1952

(This Act does not apply to petitioner's case which is governed by the legislation in effect in 1950, but both parties construe the 1950 legislation and the 1952 Act as meaning the same thing so far as

grounds for deportation arising "after entering" or "after entry" are concerned:)

1. The relevant text is given in Petitioner's brief at pages 3–4.

2. Following are excerpts from Section 244 (a), dealing with suspension of deportation, which may be relevant by virtue of the contrast in language (66 Stat. 163):

> SEC. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> * * * * *
>
> (2) **last entered** the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing **prior to or at the time of such entry** into the United States and * * *
>
> (3) **last entered** the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States **for an act committed or status acquired subsequent to such entry** into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents **at the time of such entry** into the United States; * * *
>
> (4) **last entered** the United States within two years prior to, or at any time after the date of

enactment of this Act; * * * has been physically present in the United States for a continuous period of not less than ten years **after such entry** and immediately preceding his application under this paragraph and * * *

(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241 (a) for an act committed or status acquired **subsequent to such entry** into the United States or having **last entered** the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under * * *

* * * * *

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
ROGER FISHER,
Assistant to the Solicitor General.

APRIL 1958.